BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON– Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

IN THE MATTER OF: Luxury Management Group, LLC, an Arizona limited liability company, MTE 2013 Trust, Michael Barry Eckerman, and Tonya Eckerman, trustees, Michael Barry Eckerman, and Tonya Eckerman, husband and wife, Respondents.	DOCKET NO. S-21099A-20-0057 DECISION NO. 78419 **OPINION AND ORDER**

DATE OF HEARING: February 22, 2021

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey[1]

APPEARANCES: Mr. Michael J. LaVelle, LaVelle & LaVelle, PLC, on behalf of Luxury Management Group, LLC, MTE 2013 Trust, Michael Barry Eckerman, and Tonya Eckerman, trustees, Michael Barry Eckerman, and Tonya Eckerman; and

Mr. Paul Kitchin, Staff Attorney, Securities Division of the Arizona Corporation Commission.

[1] Administrative Law Judge ("ALJ") Yvette B. Kinsey presided at the hearing and over all pre-hearing matters. ALJ Mark Preny prepared this Recommended Opinion and Order under the direction and supervision of ALJ Kinsey, who has reviewed and approved the findings and conclusions contained herein.

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BY THE COMMISSION:

Procedural History

On March 20, 2020, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Order for Other Affirmative Action ("Notice") against Luxury Management Group, LLC ("Luxury"), MTE 2013 Trust, Michael Barry Eckerman and Tonya Eckerman, trustees ("MTE"), and Michael Barry Eckerman, and Tonya Eckerman (the "Eckermans"), husband and wife, (collectively "Respondents"), in which the Division alleged violations of the Securities Act of Arizona, A.R.S. § 44-1801 et seq. ("Act") which resulted in the opening of this docket.

On April 1, 2020, Luxury filed a Request for Hearing pursuant to A.R.S. § 44-1972 and Arizona Administrative Code ("A.A.C.") R14-4-306.

On April 2, 2020, a Procedural Order was issued scheduling a telephonic pre-hearing conference for May 13, 2020.

On April 6, 2020, the Division filed an Affidavit of Service, demonstrating that the Notice had been served on Luxury.

On April 23, 2020, Luxury filed an Answer to the Notice ("Luxury Answer").

On May 13, 2020, a telephonic pre-hearing conference was held as scheduled. Luxury and the Division appeared through counsel. Respondents MTE, Michael Barry Eckerman and Tonya Eckerman did not appear. Discussion was held regarding a hearing date for this matter as well as other procedural deadlines.

Also on May 13, 2020, a Procedural Order was issued scheduling a hearing for January 11, 2021, and establishing other procedural deadlines.

On August 6, 2020, the Division filed Affidavits of Service for the Eckermans. The Affidavits of Service certified that the Notice had been served on May 26, 2020.

On August 13, 2020, the Eckermans filed a Limited Appearance and Motion to Quash Service of Process or to Provide Additional Time to Respond to Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and

Order for Other Affirmative Action ("Motion"). The Motion stated that service was made on the Eckermans by mailing the Notice to a public commercial mail location. The Motion asserted that the receipt for service was not signed by either Mr. Eckerman or Mrs. Eckerman and that no authority provides for mailing to a commercial facility not manned by the Eckermans. The Motion contended that service was not at their residence and was not personal service and that service at a commercial facility does not meet constitutional requirements. Further, the Motion contended that service by mail requires some proof that the respondents actually received the Notice, which was not shown in this matter. The Motion stated that undersigned counsel had no authority to accept service and was making a limited appearance to contest the Division's claim of service. The Motion stated that if the Motion would be denied, then the Eckermans would request an additional 30 days to respond to the Notice as the affidavits were filed over two months after the deadline for the Eckermans to file a response and request for hearing.

On August 27, 2020, the Division filed Securities Division's Response to Motion to Quash Service of Process or to Provide Additional Time to Respond to Notice. The Division stated that it served copies of the Notice on the Eckermans by certified mail at their last known address, which is a commercial mail receiving agency ("CMRA"). The Division contended that the manager of the CMRA signed receipts as an agent for the Eckermans and that the Eckermans do not deny that the manager was acting as their agent nor do they deny receiving the Notice by mail at that address. The Division disputed the Eckermans' assertion that they needed to personally sign the receipts because the Commission's rules allow for a third-party to sign a return receipt and do not require the receipt be signed by the addressee. The Division contended that even if the Commission's rules required a signed return receipt, that requirement would have been met because the Eckermans' agent signed on their behalf. The Division asserted that the service satisfied due process.

On September 1, 2020, the Eckermans filed a Reply in Support of Motion to Quash Service of Process or to Provide Additional Time to Respond to Notice ("Reply"). In the Reply, the Eckermans stated that the cases cited by the Division are cases where another person at a party's residence accepted service. Further, the Reply stated that the Eckermans have always lived in Arizona and there is no showing that they avoided service of process. The reply requested that the Eckermans be given 10 days

to request a hearing and 30 days to respond to the pleading.

On September 24, 2020, the Division filed an Affidavit of Service for Respondent Michael Eckerman. The Affidavit of Service certified that the Notice had been served on September 15, 2020, and the return receipt was signed by "M. Eckerman."

Also on September 24, 2020, the Division filed an Affidavit of Service for Respondent Spouse Tonya Eckerman. The Affidavit of Service certified that the Notice had been served on September 15, 2020, and the return receipt signed by "T. Eckerman."

On September 28, 2020, a Procedural Order was issued scheduling a telephonic pre-hearing conference for October 8, 2020, to discuss whether the Motion was now moot and to discuss other procedural deadlines.

On October 7, 2020, Counsel for the Eckermans filed a Limited Appearance and Response to Postal Receipt, reiterating the Eckermans' position that service of process had not been established.

On October 8, 2020, a telephonic pre-hearing conference was held as scheduled before a duly authorized ALJ for the Commission. Luxury and the Division appeared through counsel. Counsel for Luxury also made a limited appearance on behalf of the Eckermans. Respondent MTE did not appear. Discussion was held regarding the Eckermans' Motion. The Motion was denied. Further, discussion was held regarding timeframes for the Eckermans to request a hearing and to file an Answer in this matter.

On October 9, 2020, by Procedural Order, the denial of the Eckermans' Motion was confirmed, and the Eckermans were directed to file an Answer to the Notice within 30 days of the effective date of the Order.

On October 16, 2020, the Eckermans filed a Request for Hearing.

On November 3, 2020, the Eckermans filed an Answer to the Notice ("Eckerman Answer").

On December 9, 2020, a Procedural Order was issued scheduling a telephonic pre-hearing conference for December 21, 2020. The Procedural Order determined that due to current COVID-19 restrictions, the hearing in this matter should be held virtually and that a telephonic pre-hearing conference should be held to discuss procedures for the virtual hearing and to discuss a date for a test hearing.

On December 21, 2020, the telephonic pre-hearing conference was held as scheduled. The Division, Luxury and the Eckermans appeared through counsel. Respondent MTE did not appear. Discussion was held regarding the status of service for Respondent MTE. The Division stated that it published the Notice and that the Division anticipated that publication would be completed in a week. Counsel for Luxury and the Eckermans stated that they would be filing a Motion to Continue the Hearing because MTE had not been served and that they anticipated calling two additional witnesses if MTE was served. Counsel for Luxury and the Eckermans also stated that they would be filing an objection to a virtual hearing. The parties were instructed to provide one physical copy of their marked and redacted exhibits to the Hearing Division on January 7, 2021, by 4:00 p.m. The parties stated that they believed a test hearing was not necessary as they both had participated in a hearing before the Commission via the WebEx platform. It was also determined that a pre-hearing conference would be held on January 6, 2021, to further discuss the virtual hearing details.

On December 22, 2020, Luxury and the Eckermans filed a Motion to Continue Hearing and Objection to Telephonic and Video Testimony ("Motion to Continue").

On December 23, 2020, by Procedural Order, a telephonic pre-hearing conference was scheduled to commence on January 6, 2021, to discuss details of the virtual hearing, a schedule of witnesses for hearing, and to hear oral argument on the Motion to Continue.

On December 28, 2020, the Division filed a Notice of Service by Publication and Affidavit of Attempted Service in Support of Service by Publication.

On December 29, 2020, the Division filed a Response to Respondents' Motion to Continue Hearing and Objection to Telephonic and Video Testimony.

On January 4, 2021, Luxury and the Eckermans filed a Reply in Support of Motion to Continue Hearing and Objection to Telephonic and Video Testimony.

On January 6, 2021, the telephonic pre-hearing conference was held as scheduled. The Division, Luxury, and the Eckermans appeared through counsel. Respondent MTE did not appear. Oral argument was heard on the Motion to Continue. Based on service of the Notice by publication on Respondent MTE having been completed on December 14, 2020, the Motion to Continue was granted and the hearing was continued from January 11, 2021, to February 22, 2021. Also, Luxury and the

Eckermans' requests to bar telephonic testimony, to require video conference witnesses to be maskless and that video testimony be barred for out-of-state witnesses were denied. Further, Luxury and the Eckermans were ordered to deliver to the Hearing Division a zip drive and one physical copy of their exhibits to be used at hearing by January 20, 2021.

Also on January 6, 2021, MTE filed a Request for Hearing, pursuant to A.R.S. § 44-1972, A.A.C. R14-4-306 and A.A.C. R14-4-307.

On January 7, 2021, by Procedural Order, the granting of the Motion to Continue was reiterated and the hearing scheduled to begin on January 11, 2021, was continued to begin on February 22, 2021, and other procedural deadlines were established.

On January 27, 2021, MTE filed an Answer to the Notice of Opportunity for Hearing ("MTE Answer").

On February 22, 2021, a hearing was convened in this matter before a duly authorized ALJ for the Commission. The Division and Respondents appeared through counsel. The Division and Respondents presented testimony and evidence. The Division's witnesses testified via WebEx videoconferencing. Mr. Eckerman testified telephonically.

On March 26, 2021, a Procedural Order was issued scheduling filing deadlines for Post-Hearing Briefs.

On April 26, 2021, the Division filed its Post-Hearing Brief ("Division's Post-Hearing Brief").

On May 26, 2021, Respondents filed their Post-Hearing Response Brief ("Respondents' Post-Hearing Brief").

On June 7, 2021, the Division filed its Post-Hearing Reply Brief ("Division's Reply Brief").

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DISCUSSION

I. Brief Summary

This is an enforcement action brought against the Respondents for alleged violations of the Arizona Securities Act. Luxury was a real estate rental company that managed short-term luxury real estate rentals in Arizona. The Division alleges that Luxury and Mr. Eckerman offered and sold unregistered securities, while not registered as dealers or salesmen, in violation of A.R.S. §§ 44-1841

and 44-1842. Specifically, the Division alleges that Luxury and Mr. Eckerman sold securities in the form of notes to three investors, two of whom also were sold future options in stock and one of whom also was sold investment contracts.

The Division further alleges fraud, in violation of A.R.S. § 44-1991(A), against Luxury and Mr. Eckerman for each of these sales based upon the failure to disclose that: 1) Mr. Eckerman was subject to two temporary cease and desist orders issued by the Commission; 2) Mr. Eckerman's prior real estate companies failed to repay investors; and 3) Luxury's real estate rental business was threatened by litigation seeking an injunction to stop the rental of some of Luxury's properties. MTE and Mr. Eckerman are alleged to be control persons of Luxury. Mrs. Eckerman is joined in this action solely for the purpose of determining the liability of the marital community.

The Division requests that the Respondents be ordered to pay restitution to the investors in the amount of $733,606.53 plus interest, to pay administrative penalties, and to cease and desist from future violations of the Act. The Respondents contend that the transactions at issue did not involve the sale of securities and, therefore, the allegations should be dismissed.

II. Testimony

Lois Ann Salmon – Investor

Ms. Salmon testified that she first learned about Luxury from a friend who worked there and invited Ms. Salmon to a job interview with Mr. Eckerman in December 2018 to do sales work for the company.[2] Ms. Salmon testified that Mr. Eckerman was the CEO of Luxury and "he made every single decision in that company from the top to the bottom."[3] Ms. Salmon testified that she started working for Luxury the next day, December 4, 2018, where she solicited her friends, family and other contacts to invest in Luxury.[4] Ms. Salmon testified that Mr. Eckerman had four mansions and luxury cars that he was renting out.[5] Ms. Salmon testified that Mr. Eckerman told her the investment funds she was trying to raise would be used to invest in more mansions and high end cars to rent through Airbnb.[6]

[2] Tr. at 16-17.
[3] Tr. at 26.
[4] Tr. at 17, 63.
[5] Tr. at 17-18.
[6] Tr. at 18.

Ms. Salmon testified that Mr. Eckerman provided her with a script to use for selling the investment.[7] Ms. Salmon testified that the script involved telling potential investors that they would be investing in properties and cars, that Mr. Eckerman was bringing in quite a bit of money through Airbnb, and that Mr. Eckerman owned the mansions which served as collateral for the investors' money.[8] Ms. Salmon testified that she understood the investments she was selling to be nine-month commercial paper, limited to nine-month periods so as not to be considered securities fraud.[9] Ms. Salmon testified that the investments were supposed to pay investors between 10 to 15 percent, with monthly payments through nine months at which time the note would be paid back in full.[10] Ms. Salmon testified that she considered these transactions to be investments even though Mr. Eckerman told her not to use the word investment.[11]

Ms. Salmon testified that Mr. Eckerman did not tell her about any legal problems that he or Luxury had, or about any cease and desist orders against Mr. Eckerman.[12] Ms. Salmon testified that she learned in February or March 2019 that the Paradise Valley Homeowners Association had a cease and desist order preventing Mr. Eckerman from renting the Airbnb in Paradise Valley.[13]

Ms. Salmon testified that she was unable to convince any of her contacts to invest in Luxury.[14] Ms. Salmon testified that within two weeks, Mr. Eckerman began pressuring her to invest her own money.[15] Ms. Salmon testified that she invested her life's savings of $95,000 in Luxury.[16] Ms. Salmon testified that she considered the $95,000 payment to be an investment.[17] Ms. Salmon testified that in exchange for the $95,000, she received the same instrument as the one she was trying to sell to her contacts.[18] Ms. Salmon testified that at the time of her investment, she was aware of two previous investors, Glenn Holland and Chris Bell, and that her investment was the same basic agreement as their

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[7] Tr. at 18.
[8] Tr. at 19.
[9] Tr. at 21.
[10] Tr. at 21-22.
[11] Tr. at 22.
[12] Tr. at 18-19.
[13] Tr. at 19.
[14] Tr. at 20.
[15] Tr. at 20.
[16] Tr. at 20, 22-23, 26. Ms. Salmon testified that she made the investment through her business, Salmon 3, LLC. Tr. at 33-34; Exhs. S-16, S-17.
[17] Tr. at 23, 29.
[18] Tr. at 24.

agreements, namely, monthly payments for nine months at which time the original investment would be returned.[19] Ms. Salmon testified that Mr. Eckerman knew that the $95,000 investment was Ms. Salmon's life savings, but he did not caution her about investing all of her savings in his company.[20] Ms. Salmon testified that the percentage return on her investment was the most persuasive factor in her decision to make the investment.[21]

Ms. Salmon testified that she made her investment by wiring $95,000 to Luxury's bank account on December 13, 2018.[22] Ms. Salmon testified that she received a document titled "Commercial Paper" agreeing to pay interest in the amount of $1,000 monthly commencing January 28, 2019, through the maturity date of October 13, 2019, at which time any unpaid principal, in the amount of $100,000, and unpaid interest would be due.[23] Ms. Salmon testified that the "Commercial Paper" was a nine-month note and that she understood it was set up for that time frame so that the document would not qualify as a regulated security, which she found acceptable at the time of the transaction.[24] Ms. Salmon testified that another document, titled "Commercial Paper Loan Agreement," was the signed agreement for the investment.[25] Ms. Salmon testified that she signed the "Commercial Paper" and "Commercial Paper Loan Agreement" on or after January 16, 2019.[26] Ms. Salmon testified that the "Commercial Paper" and "Commercial Paper Loan Agreement" were issued by STLF Holdings, LLC ("STLF").[27] Ms. Salmon testified that Mr. Eckerman told her that there were some issues with Luxury and that they were going to have to do business as STLF.[28]

On cross-examination, Ms. Salmon acknowledged that the "Commercial Paper" document stated that "[t]he parties further intend that this Commercial Paper constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding…."[29] On cross-examination, Ms. Salmon acknowledged that the

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[19] Tr. at 25-26.
[20] Tr. at 26.
[21] Tr. at 26-27.
[22] Tr. at 27-28, 31, 54; Exh. S-18.
[23] Tr. at 29, 32, 54-55; Exh. S-16.
[24] Tr. at 55-56.
[25] Tr. at 30-31; Exh. S-17.
[26] Tr. at 32; Exhs. S-16, S-17.
[27] Tr. at 32-33; Exhs. S-16, S-17.
[28] Tr. at 33.
[29] Tr. at 50-52; Exh. S-16 at ACC006899.

"Commercial Paper Loan Agreement" stated that "[n]o oral understandings, representations or agreements exist between parties, and no oral understandings[,] representations or agreements or oral modifications of this Agreement shall be binding."[30] Ms. Salmon acknowledged that the "Commercial Paper Loan Agreement" further stated that "[a]ny representations which are not in writing and part of this Agreement will not be binding upon the parties."[31] Ms. Salmon acknowledged that STLF was identified as the Borrower on the "Commercial Paper Loan Agreement" and that the document stated the commercial paper loan "is intended for the use and benefit of the Borrower, acquisition of real property either directly or through affiliate entities, to pay general obligations, otherwise use the funds to further the business interests of Borrower, including but not limited to reinvestments and to otherwise operate on a day to day basis."[32]

Ms. Salmon testified that within two weeks of her $95,000 investment, Mr. Eckerman proposed that she obtain credit advances and bank loans to invest more money in Luxury.[33] Ms. Salmon testified that Mr. Eckerman did an inventory of her credit cards and instructed her to call her credit card companies to request an increase in her credit limits.[34] Ms. Salmon testified that Mr. Eckerman hired another individual, Ted Kennedy, to assist her in the process of stacking loans, whereby she could take out loans from several banks at the same time without the banks discovering the other simultaneous loans.[35] Ms. Salmon testified that she gave the proceeds of the stacked loans to Luxury because Mr. Eckerman was looking for more investment funds and he offered to give her a percentage of usage fees every month for allowing him to use her high credit.[36] Ms. Salmon testified that she considered her payment of credit card and bank loan proceeds to Luxury was an investment.[37] Ms. Salmon testified that Mr. Eckerman made the investment sound appealing as he said that he and Luxury would pay the credit card bills and pay her interest in monthly usage fees.[38] Ms. Salmon testified that she expected

[30] Tr. at 48-49; Exh. S-17 at ACC006897.
[31] Tr. at 50; Exh. S-17 at ACC006897.
[32] Tr. at 58-60; Exh. S-17 at ACC006896.
[33] Tr. at 34.
[34] Tr. at 21, 34-35.
[35] Tr. at 35-36.
[36] Tr. at 36-37.
[37] Tr. at 37.
[38] Tr. at 37-38.

to make a profit from these usage fees.[39] Ms. Salmon testified that she believed Luxury would use her credit card and bank loan proceeds for the same purpose as her $95,000 investment, namely, to purchase more properties and cars for the business.[40] Ms. Salmon testified that she had no control over Luxury's use of her investment proceeds, rather Mr. Eckerman would make those decisions.[41] Ms. Salmon testified that she made the credit card and bank loan investments in December 2018 and January 2019.[42] Ms. Salmon testified that Luxury made interest payments in December, then partial payments in January and February, but no further payments by March.[43]

Ms. Salmon testified that a document titled "Personal Credit Use Agreement" (the "Bank Loan Agreement"), executed on March 21, 2019, identified the stacked loans from five banks and credit unions, totaling $185,000, that Ms. Salmon paid to Luxury.[44] The Bank Loan Agreement was an agreement between Ms. Salmon and STLF.[45] Ms. Salmon testified that the essential terms of the Bank Loan Agreement provided for Ms. Salmon to be paid a $1,500 monthly credit use fee for a term of two years on top of the loan repayments in exchange for the bank loan proceeds.[46] Ms. Salmon testified that the Bank Loan Agreement was executed between one to two months after she paid the loan proceeds to Luxury.[47] Ms. Salmon testified that Mr. Eckerman explained to her that STLF signed the Bank Loan Agreement rather than Luxury to protect her from problems with Luxury.[48]

On cross-examination, Ms. Salmon acknowledged that the Bank Loan Agreement stated:

> This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, representations, and understandings. No oral understandings, representations or agreements exist between parties, and no oral understandings[,] representations or agreements or oral

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[39] Tr. at 38-39.
[40] Tr. at 37-38.
[41] Tr. at 39.
[42] Tr. at 39-40.
[43] Tr. at 38.
[44] Tr. at 40-43, 68; Exh. S-19.
[45] Tr. at 42; Exh. S-19. Ms. Salmon made the investment through her business, Salmon 3, LLC. Exh. S-19.
[46] Tr. at 56-58; Exh. S-19.
[47] Tr. at 43.
[48] Tr. at 42-43.

> modifications of this Agreement shall be binding. There are no expressed or implied warranties, representations or covenants relating to this transaction except as expressly ser [*sic*] forth or incorporated herein.[49]

Ms. Salmon testified that a second document titled "Personal Credit Use Agreement" (the "Credit Card Agreement"), executed on March 21, 2019, identified the credit card cash advances from two credit cards, totaling $36,315, that Ms. Salmon paid to Luxury.[50] Ms. Salmon testified that $20,000 was paid to Luxury.[51] Ms. Salmon testified that $16,315 of the credit card advances was used to pay Ted Kennedy for his work in the loan stacking, an expense that Mr. Eckerman was supposed to pay.[52] Ms. Salmon testified that in exchange for the cash advance moneys that went to Luxury, Luxury was to pay the monthly bill for the credit cards and make a monthly payment to Ms. Salmon for use of her credit.[53] Ms. Salmon testified that the Credit Card Agreement, like the Bank Loan Agreement, was executed one to two months after she paid the credit card advance to Luxury and the agreement was signed by STLF rather than Luxury to protect her from problems with Luxury.[54]

On cross-examination, Ms. Salmon acknowledged that the Credit Card Agreement stated that "[t]he parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding…."[55] Ms. Salmon acknowledged that when she signed the Credit Card Agreement and the Bank Loan Agreement she knew that Luxury was in trouble and "that the business of renting out vacation homes had really turned sour," but she did not know that Luxury was in trouble at the time she gave the money.[56] Ms. Salmon testified that her understanding of Luxury's troubles were that the homeowners association was causing problems for the Airbnbs and that Mr. Eckerman was having difficulties with the Commission, which she learned about in February or early March 2019.[57]

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[49] Tr. at 52-53; Exh. S-19 at ACC006903.
[50] Tr. at 43-44, 68; Exh. S-20.
[51] Tr. at 44-45; Exh. S-20.
[52] Tr. at 44; Exh. S-20.
[53] Tr. at 64.
[54] Tr. at 42-43, 45; Exh. S-20.
[55] Tr. at 53; Exh. S-20 at ACC006907.
[56] Tr. at 58, 62, 66.
[57] Tr. at 64-65.

Ms. Salmon testified that the Bank Loan Agreement and the Credit Card Agreement both stated that any and all outstanding balance on the credit amount was to be repaid on or before the termination date of the agreements, but that neither Luxury nor STLF repaid the balances on the credit card advances and bank loans.[58]

Ms. Salmon testified that she was not informed of any cease and desist order against Mr. Eckerman prior to making any of her investments in Luxury.[59] Ms. Salmon testified that if she had been told Mr. Eckerman was subject to two cease and desist orders regarding the sale of securities, this information would have been significant to her decision to invest in Luxury.[60]

Ms. Salmon testified that, prior to making any of her investments in Luxury, she was not told that previous companies managed by Mr. Eckerman had failed to repay their investors.[61] Ms. Salmon testified that, had she been told, this information would have been very significant to her decision to invest in Luxury.[62]

Ms. Salmon testified that, prior to making any of her investments in Luxury, she was not informed about litigation to prevent the rental of Luxury's properties.[63] Ms. Salmon testified that she later learned that the homeowners association in Paradise Valley sought to end the Airbnb rentals through litigation, which resulted in a cease and desist order against the rentals.[64] Ms. Salmon testified that if she had been informed of the litigation started by the homeowners association prior to investing in Luxury, this information would have been very significant to her decision to invest.[65]

Ms. Salmon testified that she has a bachelor's degree in elementary education and that she has previously taught fourth grade.[66] Ms. Salmon testified that she did not consult with anyone about the agreements that she signed.[67]

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[58] Tr. at 68-69; Exhs. S-19 at ACC006901, S-20 at ACC006905.
[59] Tr. at 45.
[60] Tr. at 45-46, 67.
[61] Tr. at 46.
[62] Tr. at 46.
[63] Tr. at 46.
[64] Tr. at 46-47.
[65] Tr. at 47.
[66] Tr. at 60-61.
[67] Tr. at 61.

Ms. Salmon testified that her employment with Luxury ended with her resignation in July 2019.[68]

Chris Van Royen Bell – Investor

Mr. Bell testified that he works for a contract engineering and technical recruitment organization.[69] Mr. Bell testified that he first learned about Luxury from the former bookkeeper for his accountant, who had moved to Arizona and obtained employment with Luxury, when she asked Mr. Bell if he would be interested in investing in Luxury.[70] Mr. Bell testified that in October 2018, he had a phone conversation with Mr. Eckerman, who discussed Luxury and the company's success, and suggested that Mr. Bell look at Luxury's website for more information about the company.[71] Mr. Bell testified that Mr. Eckerman said that Luxury owned three properties and a number of exotic automobiles that Luxury rented out, and that he was looking for a small investment to buy a fourth property.[72] Mr. Bell testified that Mr. Eckerman indicated that he was the owner and president of Luxury, and that he was in charge of initially sourcing the properties.[73] Mr. Bell testified that his business partner, Glenn Holland, was also present for the phone call with Mr. Eckerman.[74] Mr. Bell testified that he was interested in the investment in Luxury, but he wanted to do some research and look at the Luxury website.[75]

Mr. Bell testified that he and Mr. Holland had a second phone conversation with Mr. Eckerman and someone else from Mr. Eckerman's office.[76] Mr. Bell testified that Mr. Eckerman described himself as having been highly successful and having made a lot of money helping people invest in a similar company before finding success with this current industry.[77] Mr. Bell testified that Mr. Eckerman again explained that Luxury rented out homes and automobiles and that he was looking for a small investment to purchase a fourth property for the business.[78]

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[68] Tr. at 63.
[69] Tr. at 90.
[70] Tr. at 74.
[71] Tr. at 74-75.
[72] Tr. at 75.
[73] Tr. at 87.
[74] Tr. at 75.
[75] Tr. at 75-76.
[76] Tr. at 76.
[77] Tr. at 76.
[78] Tr. at 76-77.

Mr. Bell testified that after the second phone call, he considered the opportunity being proposed to him was an investment and he decided to proceed with it.[79] Mr. Bell testified that he was not informed of any cease and desist order against Mr. Eckerman prior to investing in Luxury.[80] Mr. Bell testified that if he had been told Mr. Eckerman was subject to two cease and desist orders regarding the sale of securities, this information would have prevented him from investing in Luxury.[81]

Mr. Bell testified that, prior to investing in Luxury, he was not told that previous companies managed by Mr. Eckerman had failed to repay their investors.[82] Mr. Bell testified that, had he been told investors were not paid on time by Mr. Eckerman, this information would have prevented him from investing in Luxury.[83] Mr. Bell testified that, prior to investing in Luxury, he was not informed about a pending lawsuit seeking to stop the rental of Luxury's homes.[84] Mr. Bell testified that if he had been informed of this pending lawsuit prior to investing in Luxury, he would have decided not to invest.[85] Mr. Bell testified that prior to his investment, he was not given any written materials, offering memorandum, or prospectus about Luxury.[86]

Mr. Bell testified that he invested $250,000 in Luxury on or about November 19, 2018.[87] Mr. Bell testified that under the terms of the investment, he was to be paid 20% annual interest, with a payment to be received monthly until the end of nine months when the principal was to be repaid.[88] Mr. Bell testified that Luxury made some interest payments but constantly missed other payments, giving him excuses that generally blamed the bank.[89] Mr. Bell testified that he never was paid the full amount of interest and that he never was repaid his principal.[90] Mr. Bell testified that he received a call in early 2019 from Mr. Eckerman who explained that Mr. Bell's principal was being transferred to

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[79] Tr. at 78.
[80] Tr. at 78.
[81] Tr. at 78.
[82] Tr. at 78.
[83] Tr. at 78-79.
[84] Tr. at 79.
[85] Tr. at 79.
[86] Tr. at 93-94.
[87] Tr. at 82-83; Exh. S-30. Mr. Bell testified that he made the investment through his company, A Bigger Boat Enterprises LLC. Tr. at 84-85; Exh. S-11. Mr. Bell testified that the $250,000 was transferred to Luxury's bank account by his wife, Cathryn Bell. Tr. at 89; Exh. S-15.
[88] Tr. at 79.
[89] Tr. at 79-80.
[90] Tr. at 81.

STLF to ensure interest and principal payments would go more smoothly because of "a small issue with respect to the government, nothing to get concerned about."[91] Mr. Bell testified that he was paid $8,333.32 by Luxury.[92] Mr. Bell testified that he was paid approximately $14,999.98 by STLF.[93]

Mr. Bell testified that his $250,000 investment was documented in a form titled "Commercial Paper."[94] Mr. Bell acknowledged that handwritten on the document was the phrase "Paid in Full," with the date February 27, 2019, and signed by Mr. Bell.[95] Mr. Bell testified that Mr. Eckerman told Mr. Bell that he had to acknowledge that the contract had been paid in full so the debt could be transferred over to STLF.[96] Mr. Bell testified that he did not receive any money with the transfer of the debt of his principal from Luxury to STLF.[97] Mr. Bell testified that a second document, titled "Commercial Paper Loan Agreement," set out contract terms for the investment.[98] Mr. Bell testified that the "Commercial Paper Loan Agreement" had similar handwritten "Paid in Full" notations to allow for the transfer of the debt to STLF.[99] Mr. Bell testified that another set of documents effective February 27, 2019, also titled "Commercial Paper" and "Commercial Paper Loan Agreement," set out the contract terms between Mr. Bell's investment company and STLF for the principal transferred from Luxury.[100] Mr. Bell testified that he understood the obligation from Luxury was extinguished with the new obligation from STLF, which Mr. Eckerman said would be the only way to be sure Mr. Bell would get paid.[101]

Mr. Bell testified that in 2019 he received a call from Mr. Eckerman who accused Mr. Bell of "turning in his information to the Arizona State government."[102] Mr. Bell testified that during this call he learned for the first time that the government had "come after" Mr. Eckerman before and that there was an issue with an association that did not want him renting out one of Luxury's houses.[103]

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[91] Tr. at 81-82.
[92] Tr. at 83; Exh. S-30.
[93] Tr. at 83; Exh. S-30.
[94] Tr. at 83-84; Exh. S-11.
[95] Tr. at 85; Exh. S-11 at ACC006985.
[96] Tr. at 85.
[97] Tr. at 85-86.
[98] Tr. at 86; Exh. S-12.
[99] Tr. at 87; Exh. S-12 at ACC006980, ACC006982.
[100] Tr. at 87-88; Exhs. S-13, S-14.
[101] Tr. at 91-92.
[102] Tr. at 80.
[103] Tr. at 80-81.

Mr. Bell testified that he had "[q]uite a lot" of investment experience before investing in Luxury.[104] Mr. Bell testified that the $250,000 investment represented approximately 10-15% of his net worth at the time he made his investment.[105]

Mr. Bell testified that he knew the entire agreement was going to be contained in the "Commercial Paper Loan Agreement," pursuant to the terms of that document, and that he had familiarity with clauses of that kind in other agreements.[106] Mr. Bell acknowledged that the "Commercial Paper Loan Agreement" with Luxury provided that "this Commercial Paper Loan and working capital funding is intended for the use and benefit of the Borrower, acquisition of real property either directly or through affiliate entities, to pay general obligations, otherwise use the funds to further the business interests of Borrower, including but not limited to reinvestments and to otherwise operate on a day to day basis" and that this provision did not conflict with his current understanding of the investment.[107]

Glenn Brian John Holland – Investor

Mr. Holland testified that he owns an employment agency operating in Canada and the United States.[108] Mr. Holland testified that he first learned about Luxury from a bookkeeper that had worked at the accounting firm he used before she took a position at Luxury, when she asked Mr. Holland if he would be interested in investing in Luxury.[109] Mr. Holland testified that the former bookkeeper told him that Luxury was renting three homes as an Airbnb and that the company was looking for investments.[110] Mr. Holland testified that he and Mr. Bell spoke on the telephone with Mr. Eckerman, the CEO of Luxury, who described Luxury's business, homes, and website to them.[111] Mr. Holland testified that he and Mr. Bell asked more questions about Luxury's business in a second call with Mr. Eckerman who said Luxury's business was busy and he was considering getting a small hotel for the Airbnbs.[112] Mr. Holland testified that Mr. Eckerman never told Mr. Holland anything about Mr.

[104] Tr. at 89.
[105] Tr. at 90.
[106] Tr. at 92; Exh. S-12 at ACC006981.
[107] Tr. at 92-93; Exh. S-12 at ACC006980.
[108] Tr. at 117.
[109] Tr. at 97.
[110] Tr. at 98-99.
[111] Tr. at 99-101.
[112] Tr. at 102.

Eckerman's business track record.[113] Mr. Holland testified that he considered the opportunity presented by Mr. Eckerman to be an investment and Mr. Holland did invest with Luxury.[114] Mr. Holland testified that he invested $250,000 in Luxury on November 16, 2018, through his investment company, JennKyle, Inc. ("JennKyle").[115] Mr. Holland testified that his $250,000 investment represented under one percent of his net worth.[116] Mr. Holland testified that the paperwork for the investment with Luxury included a document titled "Commercial Paper" and a document titled "Commercial Paper Loan Agreement," both dated November 16, 2018.[117] Mr. Holland testified that the 20% interest rate was much higher than a bank loan, but in his experience a higher lending rate does not necessarily make a loan more risky.[118]

Mr. Holland testified that he did not remember if he had received anything like a prospectus before investing, but he did tour the three homes Luxury was using for rentals.[119] Mr. Holland testified that one of the factors persuasive to his decision to invest was that Mr. Eckerman was looking to obtain investment funds for another house or two for Luxury's business.[120] Mr. Holland testified that before investing in Luxury, he was not told anything negative about Mr. Eckerman's background, rather Mr. Eckerman claimed to have been highly successful and made millions of dollars in his past projects.[121] Mr. Holland testified that he was not informed of any cease and desist orders against Mr. Eckerman prior to investing in Luxury.[122] Mr. Holland testified that if he had been told Mr. Eckerman was subject to two cease and desist orders regarding the sale of securities, this information would have prevented him from investing in Luxury.[123] Mr. Holland testified that, prior to investing in Luxury, he was not informed that previous companies managed by Mr. Eckerman had failed to timely repay their investors.[124] Mr. Holland testified that, had he been told past investors had not been repaid by Mr.

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[113] Tr. at 102.
[114] Tr. at 102-103.
[115] Tr. at 109-110; Exh. S-30
[116] Tr. at 117-118.
[117] Tr. at 111, 113-114; Exhs. S-7, S-8.
[118] Tr. at 122-123.
[119] Tr. at 103.
[120] Tr. at 103-104.
[121] Tr. at 104-105.
[122] Tr. at 105.
[123] Tr. at 105.
[124] Tr. at 105.

Eckerman, this information would have prevented him from investing in Luxury.[125] Mr. Holland testified that, prior to investing in Luxury, he was not informed about any pending litigation seeking to stop the rental of Luxury's homes.[126] Mr. Holland testified that if he had been informed there was a pending lawsuit seeking to stop the rental of two of Luxury's houses prior to him investing in Luxury, he would most likely have decided not to invest.[127] Mr. Holland testified that early in the first quarter of 2019, Mr. Eckerman told Mr. Holland and Mr. Bell about a lawsuit from an association seeking to stop the rental of at least one of Luxury's homes.[128]

Mr. Holland testified that he received several interest payments from Luxury, but not all the interest payments that were due.[129] Mr. Holland testified that Mr. Eckerman told him that because of issues Mr. Eckerman was having with Luxury, the debt would have to be moved over to STLF to make payments easier.[130] Mr. Holland testified that as part of the transfer of the debt to STLF, and pursuant to Mr. Exkerman's instruction, Mr. Holland wrote "paid in full" on the "Commercial Paper" document on February 27, 2019.[131] Mr. Holland testified that he signed some paperwork for the deal with STLF, but it was a paper transaction only with Mr. Holland not receiving any funds back to pass on to STLF.[132] Mr. Holland testified that paperwork for this transaction included documents titled "Commercial Paper" and "Commercial Paper Loan Agreement" between JennKyle and STLF.[133] Mr. Holland testified that when he wrote "paid in full" on the "Commercial Paper" document, he believed that Luxury had no more obligation to Mr. Holland and that going forward his claim would be against STLF.[134] Mr. Holland testified that, prior to February 27, 2019, he had heard that city governments or homeowners associations were contesting the way Luxury's houses were being used and that Mr. Bell had dug up some information that they discussed with Mr. Eckerman.[135]

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[125] Tr. at 105.
[126] Tr. at 106.
[127] Tr. at 106.
[128] Tr. at 106-107.
[129] Tr. at 107.
[130] Tr. at 108.
[131] Tr. at 112; Exh. S-7.
[132] Tr. at 108-109.
[133] Tr. at 114-115; Exhs. S-9, S-10.
[134] Tr. at 120.
[135] Tr. at 121-122.

Mr. Holland testified that he received $8,333.32 from Luxury.[136] Mr. Holland testified that he received $14,999.98 from STLF.[137]

Mr. Holland testified that, before investing in Luxury, he had "quite a lot" of investment experience, having invested in "all kinds of industries" over 20 years.[138]

Mr. Holland testified that, pursuant to the terms of the "Commercial Paper Loan Agreement" between Luxury and JennKyle, he understood that the transaction was a commercial paper loan, not subject to the Securities Exchange Act or required filings under A.R.S. § 44-1843.[139]

Cody Carl Turley – Division Forensic Accountant

Mr. Turley testified that he has been a forensic accountant for the Division for about six months.[140] Mr. Turley testified that before working with the Division, he was a forensic accountant for one year with a consulting firm in Washington, D.C., where he assisted in Department of Justice investigations, and that he had previously been a forensic accounting intern at both the United States Securities and Exchange Commission and at an accounting firm in California.[141] Mr. Turley testified that he has a bachelor's degree in accounting from Brigham Young University.[142]

Mr. Turley testified that he prepared a summary of payments in this case based upon over 500 pages of bank statements and records that he received.[143] Mr. Turley testified that he excluded from the summary approximately $15,000 of payments to Lois Salmon that had been identified as being for payroll.[144]

William Woerner – Division Investigator

Mr. Woerner testified that he has been an investigator for the Division for approximately five years and that he is the investigator who was assigned to this case.[145] Mr. Woerner testified that he was also the investigator on another enforcement action against Mr. Eckerman, from which

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[136] Tr. at 110; Exh. S-30.
[137] Tr. at 110-111; Exh. S-30. Mr. Holland acknowledged that the Division's records show he received $16,666.64 from STLF but he believed $14,999.98 was the correct amount. Tr. at 110-111; Exh. S-30.
[138] Tr. at 115, 117.
[139] Tr. at 118-119; Exh. S-8 at ACC006961.
[140] Tr. at 126.
[141] Tr. at 126-127.
[142] Tr. at 127.
[143] Tr. at 127-130; Exh. S-30.
[144] Tr. at 129.
[145] Tr. at 143-144.

investigation he obtained a document titled "Pacific Capital Enterprises, LLC, Private Placement Memorandum" ("Pacific PPM").[146] The Pacific PPM stated that "Michael Eckerman and his wife are trustees of [the MTE 2013 Trust]."[147] Mr. Woerner testified that he obtained a printed copy of commercial paper interest rates that he had observed on the Federal Reserve Board's website in March 2020.[148] Mr. Woerner testified that in addition to the Pacific PPM matter, he participated in another investigation relating to Mr. Eckerman and another one of his companies, Premier Asset Management Group, LLC ("PAMG").[149] The parties stipulated that before November 2018, PAMG failed to make timely payments to five or more of its investors.[150]

Michael Barry Eckerman

Mr. Eckerman, on the advice of counsel, exercised his Fifth Amendment right to remain silent in response to numerous questions, including:

- Your name is Michael Barry Eckerman, correct?[151]
- You're married to Tonya Eckerman, correct?[152]
- You two have been married since at least 1998, correct?[153]
- International Asset Management Group was a real estate company that you managed, correct?[154]
- You were the direct or beneficial owner of that company, correct?[155]
- It was funded by individual investors, correct?[156]
- A regulatory agency took action against International Asset Management Group, correct?[157]
- The company went out of business due to the regulatory action, correct?[158]

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[146] Tr. at 145; Exh. S-6.
[147] Exh. S-6 at PCE01088.
[148] Tr. at 146-147; Exh. S-23.
[149] Tr. at 152.
[150] Tr. at 157.
[151] Tr. at 159.
[152] Tr. at 159-160.
[153] Tr. at 160.
[154] Tr. at 160.
[155] Tr. at 160.
[156] Tr. at 160.
[157] Tr. at 160.
[158] Tr. at 160.

- The company failed to repay its investors, correct?[159]
- You moved on to a new company then, correct?[160]
- After International Asset Management Group you moved on to Residential Asset Management, correct?[161]
- Residential Asset Management was a real estate company that you managed, correct?[162]
- You were the director or beneficial owner of Residential Asset Management, correct?[163]
- Residential Asset Management was funded by individual investors, correct?[164]
- A regulatory agency took action against Residential Asset Management, correct?[165]
- Residential Asset Management went out of business after the regulatory action, correct?[166]
- Residential Asset Management failed to repay its investors, correct?[167]
- After Residential Asset Management you moved on to Novus Dia, LLC ("Novus"), correct?[168]
- Novus was a real estate company that you managed, correct?[169]
- You were the direct or beneficial owner of Novus, correct?[170]
- Novus was funded by individual investors, correct?[171]
- A regulatory agency took action against Novus, correct?[172]
- Novus went out of business due to the regulatory action, correct?[173]
- Novus failed to repay its investors, correct?[174]
- Secured Asset Management is a real estate company you managed, correct?[175]

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[159] Tr. at 160.
[160] Tr. at 160-161.
[161] Tr. at 161.
[162] Tr. at 161.
[163] Tr. at 161.
[164] Tr. at 161.
[165] Tr. at 161.
[166] Tr. at 161.
[167] Tr. at 161.
[168] Tr. at 161.
[169] Tr. at 162.
[170] Tr. at 162.
[171] Tr. at 162.
[172] Tr. at 162.
[173] Tr. at 162.
[174] Tr. at 162.
[175] Tr. at 162.

- You were the direct or beneficial owner of Secured Asset Management, correct?[176]
- Secured Asset Management was funded by individual investors, correct?[177]
- A regulatory agency took action against Secured Asset Management, correct?[178]
- Secured Asset Management went out of business due to that regulatory action, correct?[179]
- Secured Asset Management failed to repay its investors, correct?[180]
- After Secured Asset Management, you moved on to a new real estate company, correct?[181]
- PAMG is a real estate company that you managed, correct?[182]
- You were the direct or beneficial owner of PAMG, correct?[183]
- PAMG was funded by individual investors, correct?[184]
- A regulatory agency took action against PAMG, correct?[185]
- PAMG went out of business following the regulatory action, correct?[186]
- PAMG failed to repay its investors, correct?[187]
- Before PAMG was completely done, you moved on to Pacific Capital Enterprises, LLC ("Pacific"), correct?[188]
- Pacific was a real estate company that you managed, correct?[189]
- You were the direct or beneficial owner of Pacific, correct?[190]
- Pacific was funded by individual investors, correct?[191]
- A regulatory agency took action against Pacific, correct?[192]

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[176] Tr. at 162.
[177] Tr. at 162-163.
[178] Tr. at 163.
[179] Tr. at 163.
[180] Tr. at 163.
[181] Tr. at 163.
[182] Tr. at 163.
[183] Tr. at 163.
[184] Tr. at 163.
[185] Tr. at 163-164.
[186] Tr. at 164.
[187] Tr. at 164.
[188] Tr. at 164.
[189] Tr. at 164.
[190] Tr. at 164.
[191] Tr. at 164.
[192] Tr. at 164.

- Pacific went out of business following the regulatory action, correct?[193]
- Pacific failed to repay its investors, correct?[194]
- After Pacific, you moved on to Luxury, correct?[195]
- Luxury was a real estate company that you managed, correct?[196]
- You were the beneficial owner of Luxury, correct?[197]
- Luxury was funded by individual investors, correct?[198]
- A regulatory agency took action against Luxury, correct?[199]
- Luxury failed to repair its investors, correct?[200]
- Mr. Eckerman, you are a grifter, correct?[201]
- Your grift is to convince unsuspecting people to fund your real estate companies, correct?[202]
- You've been using the same grift for years, correct?[203]
- You created Luxury, correct?[204]
- Luxury was your idea, correct?[205]
- You decided how Luxury would raise money, correct?[206]
- You were the signer on Luxury's bank account, correct?[207]
- MTE 2013 Trust owns Luxury, correct?[208]
- MTE 2013 Trust is the sole member of Luxury, correct?[209]
- You are currently a trustee of MTE 2013 Trust, correct?[210]

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[193] Tr. at 164-165.
[194] Tr. at 165.
[195] Tr. at 165.
[196] Tr. at 165.
[197] Tr. at 165.
[198] Tr. at 165.
[199] Tr. at 165.
[200] Tr. at 165.
[201] Tr. at 165-166.
[202] Tr. at 166.
[203] Tr. at 166.
[204] Tr. at 166.
[205] Tr. at 166.
[206] Tr. at 166.
[207] Tr. at 166.
[208] Tr. at 166.
[209] Tr. at 166-167.
[210] Tr. at 167.

- You were a trustee of MTE 2013 Trust during the time that it owned Luxury, correct?[211]
- Tonya Eckerman was also a trustee of MTE 2013 Trust during the time that it owned Luxury, correct?[212]
- You are one of the beneficiaries of MTE 2013 Trust, correct?[213]
- Tonya Eckerman is also a beneficiary of MTE 2013 Trust, correct?[214]
- The letters MTE in the name MTE 2013 Trust stand for Michael and Tonya Eckerman, correct?[215]
- You spoke with Chris Bell, Glenn Holland, and Lois Salmon about investing in Luxury, correct?[216]
- You spoke with them to convince them to invest in Luxury, correct?[217]
- At the time each of them invested, you were subject to two temporary cease and desist orders from the Arizona Corporation Commission to cease and desist from violating the Arizona Securities Act, correct?[218]
- You did not disclose the cease and desist orders to Chris Bell, Glenn Holland, or Lois Salmon, correct?[219]
- No one else disclosed those cease and desist orders to Chris Bell, Glenn Holland, and Lois Salmon before they invested either, correct?[220]
- You did not disclose to Chris Bell, Glenn Holland, and Lois Salmon your history of real estate companies that failed to repay their investors, correct?[221]
- No one else disclosed that information to Chris Bell, Glenn Holland, and Lois Salmon before they invested either, correct?[222]

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[211] Tr. at 167.
[212] Tr. at 167.
[213] Tr. at 167.
[214] Tr. at 167.
[215] Tr. at 167.
[216] Tr. at 167.
[217] Tr. at 167-168.
[218] Tr. at 168.
[219] Tr. at 168.
[220] Tr. at 168.
[221] Tr. at 168.
[222] Tr. at 168.

- You did not disclose to Chris Bell, Glenn Holland, and Lois Salmon, before they invested, the litigation that was pending at the time of their investments that was seeking to enjoin the rental of two of Luxury's properties, correct?[223]
- No one else disclosed that pending injunction litigation to Chris Bell, Glenn Holland, or Lois Salmon before they invested, correct?[224]
- Luxury's so-called commercial paper instrument was an investment, correct?[225]
- And the instruments were notes, correct?[226]
- You pitched the instruments to Chris Bell, Glenn Holland, and Lois Salmon as an investment, correct?[227]
- Lois Salmon's credit use agreements were also part of an investment by her, correct?[228]
- You pitched those credit use investments to Lois Salmon, correct?[229]
- Luxury used the funds from Lois Salmon's credit use investments for the same purposes that it used the funds from Chris Bell's and Glenn Holland's investments, correct?[230]
- You're familiar with the contents of all of the exhibits exchanged by the parties in this case, right?[231]
- If I refer you to one of the exhibits you'll know what I'm talking about, correct?[232]
- You're familiar with Exhibit S-7, right?[233]
- You signed Exhibit S-7, right?[234]
- And to be more clear, you signed the commercial paper instrument between Luxury and JennKyle, correct?[235]

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[223] Tr. at 169.
[224] Tr. at 170.
[225] Tr. at 170.
[226] Tr. at 170.
[227] Tr. at 170.
[228] Tr. at 170.
[229] Tr. at 170.
[230] Tr. at 170.
[231] Tr. at 170-171.
[232] Tr. at 171.
[233] Tr. at 171.
[234] Tr. at 171.
[235] Tr. at 171.

- You signed the commercial paper loan agreement between Luxury and JennKyle, right?[236]
- In both cases you signed those documents as the authorized signatory for Luxury, correct?[237]
- For the commercial paper instrument between Luxury and A Bigger Boat Enterprises, LLC, you signed that agreement on behalf of Luxury, correct?[238]
- For the commercial paper loan agreement between Luxury and A Bigger Boat Enterprises, LLC, you signed that agreement on behalf of Luxury, correct?[239]
- At Luxury you went by the title CEO, correct?[240]
- You controlled all the decisions made for Luxury, correct?[241]
- You're familiar with the transfer of the investment interests from Luxury to STLF, correct?[242]
- And both Chris Bell and Glen Holland had their investment interests transferred between those two companies, right?[243]
- That transfer is something that you suggested to them, correct?[244]
- You suggested that to them, telling them it was the only way to ensure they would be repaid, correct?[245]
- Neither Luxury nor STLF ever repaid the principal that Glenn Holland or Chris Bell invested, correct?[246]
- Transferring the investment interests for Chris Bell and Glenn Holland from Luxury to STLF was just a shell game, correct?[247]

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[236] Tr. at 171.
[237] Tr. at 171-172.
[238] Tr. at 172.
[239] Tr. at 172.
[240] Tr. at 172.
[241] Tr. at 172.
[242] Tr. at 172.
[243] Tr. at 172.
[244] Tr. at 173.
[245] Tr. at 173.
[246] Tr. at 173.
[247] Tr. at 173.

III. Legal Argument

A. Classification of the Investments

The Division has identified three categories of investments sold by the Respondents: 1) "Debt Investments," which include $595,000 raised in November and December 2018 from Mr. Bell, Mr. Holland, and Ms. Salmon; 2) "Credit Use Investments" made by Ms. Salmon in January 2019, totaling $200,000; and 3) Luxury stock, which was included as a "Future Options" provision in the Debt Investment agreements for Mr. Bell and Mr. Holland. The Division contends that the Debt Investments, the Credit Use Investments, and the stock are securities.

1. Debt Investments

The Division contends that the Debt Investments are securities in the form of notes, evidence of indebtedness, and investment contracts. Notes, evidence of indebtedness, and investment contracts are all specifically included in the definition of a security under A.R.S. § 44-1801(27)(a). Therefore, if the record establishes that the income stream investments qualify as any of those three types of instruments, then the income stream investments are securities under the Act.

a) Notes for Registration Purposes

The Division contends that while the Debt Investments are not titled or captioned as being "notes," they meet the definition of a note. A note is "[a] written promise by one party (the maker) to pay money to another party (the payee) or to bearer. A note is a two-party negotiable instrument."[248] A negotiable instrument is "a written instrument that (1) is signed by the maker or drawer, (2) includes an unconditional promise or order to pay a specified sum of money, (3) is payable on demand or at a definite time, and (4) is payable to order or to bearer."[249] The Division argues that the Debt Investments meet the definition of a note because they were signed by their makers and included a promise to pay a specific amount by a defined maturity date.[250] Citing the Arizona Supreme Court in *State v. Tober*, the Division contends that all notes are securities that must be registered with the Commission unless an exemption applies.[251] The Division contends that the Respondents have not met their burden of

[248] NOTE, Black's Law Dictionary (11th ed. 2019).
[249] NEGOTIABLE INSTRUMENT, Black's Law Dictionary (11th ed. 2019).
[250] Exhs. S-7, S-11, S-16.
[251] *State v. Tober*, 173 Ariz. 211, 213, 841 P.2d 206, 208 (1992).

proof to show that they strictly complied with any exemption to the registration requirements.

The Respondents contend that an exemption applies, citing A.R.S. §44-1843(A)(8), which exempts securities, dealers, and salesmen from the registration requirements found in A.R.S. §§ 44-1841 and 44-1842 when the securities are:

> Commercial paper that arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, that evidences an obligation to pay cash within nine months of the date of issuance or sale, exclusive of grace, or any renewal of such paper that is likewise limited, or any guarantee of such paper or of any such renewal.

The Division argues that this exemption does not apply because the Debt Investments are not commercial paper. The Division contends that commercial paper means "short-term, high quality instruments issued to fund current operations and sold only to highly sophisticated investors."[252] The Division argues that the Debt Investments were not high quality instruments as evidenced by: 1) their interest rates of 12-20 percent when compared to the under 3 percent interest offered by true commercial paper at that time as calculated by the Federal Reserve Bank;[253] and 2) Mr. Eckerman so quickly proposing to the Luxury investors that the Debt Investment be replaced with instruments from STLF.[254] The Division further contends that the Debt Investments were not sold only to highly sophisticated investors because: 1) the record does not establish that Ms. Salmon, a teacher with a bachelor's degree in elementary education, had any investment experience before purchasing a Debt Investment;[255] and 2) the record contains no evidence that Luxury's sales agents who were pitching Debt Investments to people they knew had limited their pitches to only highly sophisticated investors.[256] The Division argues that while the Debt Investments cite the commercial paper exemption of A.R.S. § 44-1843(A)(8), A.R.S. § 44-2000 provides that compliance with the Act cannot be waived by any condition, stipulation or provision of a security purchase.

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[252] *Reves v. Ernst & Young*, 494 U.S. 56, 70, 110 S. Ct. 954 (1990); *S.E.C. v. Wallenbrock*, 313 F.3d 532, 537 (9th Cir. 2002).
[253] Exhs. S-7, S-11, S-16, S-23.
[254] Tr. at 33, 81-82, 108.
[255] Tr. at 60-61.
[256] Tr. at 17.

The evidence of record establishes that the Debt Investments meet the definition of notes. The Division correctly states the standard applied by the Arizona Supreme Court to determine whether a note is a security for registration purposes, namely that a note is a security unless otherwise exempted by statute.[257]

Under A.R.S. § 44-2033, the burden of proof to establish an exemption from registration is borne by the party raising the defense. "Because of the vital public policy underlying the registration requirement, there must be strict compliance with all the requirements of the exemption statute."[258] The Debt Investments were scheduled to mature in nine-month periods, meeting the duration requirement set forth in A.R.S. § 44-1843(A)(8). However, the Division correctly notes that the record establishes neither that the Debt Investments were commercial paper, as defined by the Supreme Court, nor that the Debt Investments were being sold only to highly sophisticated investors. As such, the Respondents have failed to meet their burden of proof to establish that the commercial paper exemption of A.R.S. § 44-1843(A)(8) applied to the Debt Investments. Therefore, we find that the Debt Investments were notes subject to the registration requirements of the Act.

b) Notes for Fraud Purposes

i) Applicability of the *Reves* Test

The Division contends that the notes are securities under the Act's antifraud provisions. When analyzing a note in terms of whether it is a security for the purposes of the antifraud provisions of the Act, the Arizona Court of Appeals has adopted the "family resemblance" test, which was used under federal securities law by the United States Supreme Court in *Reves v. Ernst & Young*,[259] and adopted in Arizona in *MacCollum v. Perkinson*.[260] The test begins with the presumption that every note is a security.[261] This presumption can be rebutted if a review of four factors establishes a "family resemblance" to a list of instruments that are not securities, or if those factors establish a new category of instrument that should be added to the list.[262] This list of notes "that are not securities include[s] the

[257] *Tober*, 173 Ariz. at 213, 841 P.2d at 209 (1992).
[258] *State v. Baumann*, 125 Ariz. 404, 411, 610 P.2d 38, 45 (1980).
[259] *Reves v. Ernst & Young*, 494 U.S. 56, 110 S. Ct. 945, 108 L. Ed. 2d 47 (1990).
[260] *MacCollum v. Perkinson*, 185 Ariz. 179, 913 P.2d 1097 (App. 1996).
[261] *Reves*, 494 U.S. at 65, 110 S. Ct. at 951.
[262] *Id.* Since both inquiries involve application of the same four-factor test, they "essentially collapse into a single inquiry." *S.E.C. v. Wallenbrock*, 313 F.3d 532, 537 (9th Cir. 2002).

note delivered in consumer financing, the note secured by a mortgage on a home, the short-term note secured by a lien on a small business or some of its assets, the note evidencing a 'character' loan to a bank customer, short-term notes secured by an assignment of accounts receivable, or a note which simply formalizes an open-account debt incurred in the ordinary course of business" as well as "notes evidencing loans by commercial banks for current operations."[263] The four factors considered are: 1) the motivations prompting a reasonable buyer and seller to enter the transaction; 2) the plan of distribution of the instrument to determine if it is an instrument subject to common speculation or investment; 3) the reasonable expectations of the investing public; and 4) whether some risk-reducing factor, such as the existence of another regulatory scheme, would render application of the Securities Act unnecessary.[264] We may also consider the notes in light of the economic realities of the transaction.[265]

The Respondents contend that the *Reves* test should not apply because the *Reves* court considered demand notes while nine-month notes are at issue here. The Respondents note that the United States Supreme Court has held that the securities laws are not "a broad federal remedy for all fraud."[266] The Respondents argue that *Reves* allows for a variety of short-term notes to "fall without the security category," such as the nine-month Debt Investments at issue here.[267] The Respondents contend that the Arizona legislature has mandated that Arizona follow federal securities law precedent wherever possible: "It is the intent of the legislature that in construing the [the Act], the courts may use as a guide the interpretations given by the ... federal or other courts in construing substantially similar provisions in the federal securities laws of the United States."[268]

The Division counters that the *Reves* test is properly applied here because the Arizona Court of Appeals has expressly adopted *Reves* to determine the meaning of a security under A.R.S. § 44-1991.[269] The Division acknowledges that a different section of *Reves* addresses a provision of the federal Securities Exchange Act of 1934 that defines a security as not including "any note … which has a

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[263] *Reves*, 494 U.S. at 65, 110 S. Ct. at 951 (internal quotations omitted).
[264] *Reves*, 494 U.S. at 66-67, 110 S. Ct. at 951-952; *MacCollum* 185 Ariz. at 187-188, 913 P.2d at 1105-1106.
[265] *Wallenbrock*, 313 F.3d at 538.
[266] *Marine Bank v. Weaver*, 455 U.S. 551, 556, 102 S. Ct. 1220, 1223, 71 L. Ed. 2d 409 (1982)
[267] *Reves*, 494 U.S. at 65, 110 S. Ct. at 951.
[268] 1996 Ariz. Sess. Laws, ch. 197, § 11(C) (2nd Reg.Sess.).
[269] *MacCollum* 185 Ariz. at 186, 913 P.2d at 1104.

maturity at the time of issuance of not exceeding nine months...."[270] However, the Division contends that this portion of the *Reves* opinion is inapplicable as the Act has no comparable provision, rather the Act defines "any note" as a security regardless of duration.[271]

As noted by the Division, the federal securities law which removes from the definition of a security those short-term notes of nine-month duration or less has no comparable provision in the Act. Arizona courts "will give less weight and not necessarily defer to federal case law that construes a parallel federal statute when the state and federal statutory provisions or their underlying policies materially differ."[272] Accordingly, we reject the Respondents' argument that the Debt Investments are not securities because of their nine-month duration. Instead, we follow the instruction of *MacCollum* and apply the *Reves* test to determine whether the Debt Investments are securities under the Act's antifraud provisions.

ii) Analysis under the *Reves* Test

The first *Reves* factor is "to assess the motivations that would prompt a reasonable seller and buyer to enter into [the transaction]."[273] Under the first factor, a note is more likely a security "[i]f the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate."[274] Conversely, a note is less likely to be a security "[i]f the note is exchanged to facilitate the purchase and sale of a minor asset or consumer good, to correct for the seller's cash-flow difficulties, or to advance some other commercial or consumer purpose."[275] The Division notes that Mr. Eckerman told Mr. Bell and Mr. Holland that Luxury intended to use their money to purchase a fourth house for its rental business, which would be a substantial investment.[276] The Division contends that the loan agreement forms accompanying the Debt Investments detailed the use of the investment funds for general use of the business and to finance substantial investments, by stating that the "funding is intended for the ... acquisition of real property, ... to pay general obligations, [and] otherwise use the

[270] 15 U.S.C. § 78c(a)(10); *Reves*, 494 U.S. at 70-73, 110 S. Ct. at 953-955.
[271] A.R.S. § 44-1801(27)(a).
[272] *Sell v. Gama*, 231 Ariz. 323, 327 ¶ 18, 295 P.3d 421, 425 (2013).
[273] *Reves*, 494 U.S. at 66, 110 S. Ct. at 951.
[274] *Reves*, 494 U.S. at 66, 110 S. Ct. at 951-952.
[275] *Reves*, 494 U.S. at 66, 110 S. Ct. at 952.
[276] Tr. at 63, 103-104.

funds to further the business...."[277] The Division further contends that the Debt Investments' high annual interest rates of 12-20% demonstrate that the investors were motivated by the profit the notes were to generate, consistent with a security.[278]

The Respondents contend that the Debt Investments were used to correct Luxury's cash flow difficulties, as evidenced by Luxury's bank statement showing a balance of $27.60, and therefore they are not securities.[279] The Respondents also contend that the buyers of the Debt Investments had no participation in Luxury's profits, rather they were entitled to receive interest on the notes regardless of the success or failure of the underlying business.[280] The Division argues that the Respondents' argument demonstrates a misunderstanding of *Reves*, which stated that profit can include interest and which specifically held that the purchasers of the notes in that case had bought them "in order to earn a profit in the form of interest."[281]

While Luxury's bank balance may have indicated cash flow difficulties, Luxury and Mr. Eckerman informed Debt Investment investors orally and/or in writing that Luxury intended to use the investment proceeds for general business purposes and to acquire real estate for its business.[282] As noted by the Division, the Debt Investments offered high rates of interest that would be enticing to investors. Ms. Salmon testified that the high return on investment was the most persuasive factor in her decision to invest.[283] The first *Reves* factor weighs in favor of finding that the Debt Investments are securities.

The second *Reves* factor is the plan of distribution. Offers and sales to a broad segment of the public will establish common trading in an instrument.[284] "If notes are sold to a wide range of unsophisticated people, as opposed to a handful of institutional investors, the notes are more likely to be securities."[285] However, the number of investors is not dispositive, but must be weighed against the

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[277] Exhs. S-8 at ACC006961, S-12 at ACC006980, S-17 at ACC006896.
[278] Exhs. S-7, S-11, S-16.
[279] Exh. S-15 at ACC006628.
[280] Exhs. S-7, S-11, S-16.
[281] *Reves*, 494 U.S. at 67-68, 110 S. Ct. at 952.
[282] Tr. at 63, 103-104; Exhs. S-8 at ACC006961, S-12 at ACC006980, S-17 at ACC006896.
[283] Tr. at 26-27.
[284] *Reves*, 494 U.S. at 68, 110 S. Ct. at 953.
[285] *U.S. S.E.C. v. Zada*, 787 F.3d 375, 381 (6th Cir. 2015).

purchasers' need for the protection of the securities laws.[286] The Division contends that while Luxury secured only three investors, the plan of distribution was broad for the notes as evidenced by: Mr. Eckerman hiring Ms. Salmon to seek investments from her personal network and rolodex;[287] Mr. Eckerman's expectation that Ms. Salmon would raise $250,000 for Debt Investments within her first two weeks;[288] and Mr. Bell and Mr. Holland having been contacted by a former bookkeeper at the accounting firm they used, demonstrating the broad network from which the former bookkeeper was seeking investors.[289] The Respondents make no contentions that address the second *Reves* factor. While this case presents only three investors who purchased Debt Investments, the record establishes that Luxury and Mr. Eckerman were interested in seeing rapid sales of the Debt Investments and Luxury's employees broadly reached out to potential investors. The second *Reves* factor weighs in favor of finding that the notes are securities.

The third *Reves* factor is the reasonable expectations of the investing public. The fundamental essence of a security is its character as an investment.[290] When a note seller calls the note an investment, it is generally reasonable for a prospective purchaser to take the offeror at its word, but when note purchasers are expressly put on notice that a note is not an investment, it is usually reasonable to conclude that the investing public would not expect the notes to be securities.[291] The Division contends that the testimony of the investors shows that they thought the Debt Investments were an investment.[292] The Division argues that this belief was reasonable as Ms. Salmon considered the Debt Investments to be investments when she was presenting them to people in her network, even though Mr. Eckerman instructed her not to describe them as investments.[293] The Respondents make no contentions that address the third *Reves* factor.

Here, the Debt Investment documents describe the transactions as loans in exchange for the receipt of commercial paper.[294] Mr. Holland testified that he understood the Debt Investment

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[286] *McNabb v. S.E.C.*, 298 F.3d 1126, 1132 (9th Cir. 2002).
[287] Tr. at 17, 34.
[288] Tr. at 20.
[289] Tr. at 74, 97.
[290] *Reves*, 494 U.S. at 68, 110 S. Ct. at 953.
[291] *Stoiber v. S.E.C.*, 161 F.3d 745, 751 (D.C. Cir. 1998).
[292] Tr. at 23, 78, 102.
[293] Tr. at 22.
[294] Exhs. S-7, S-8, S-11, S-12, S-16, S-17.

transaction was a commercial paper loan.[295] However, even if a note is determined to be commercial paper, that status does not automatically mean the note is not a security.[296] As noted by the Division all three purchasers of the Debt Investments testified that they considered the transactions to be investments and Ms. Salmon thought of them as investments while working for Luxury, in spite of the contrary instruction from Mr. Eckerman.[297] The third *Reves* factor weighs in favor of finding that the notes are securities.

The fourth *Reves* factor requires us to look at risk-reducing factors that would diminish the need for protection under the Act, such as the presence of other regulatory schemes, collateral or insurance.[298] The Division argues that the Respondents have not provided evidence of any significant risk-reducing factor. The Division notes, on the contrary, that the Debt Investment investors have suffered massive losses.[299] The Respondents contend that the Debt Investments are "straight notes" for which "[o]ther agencies such as the State Banking Commission might have rules that apply to them, but not the Arizona Corporation Commission."[300] The evidence of record reveals no protections granted to the investors that would alleviate a need for the protections under the Act. The fourth *Reves* factor weighs in favor of finding that the notes are securities.

Under Arizona law, the notes sold by the Respondents are presumed to be securities. Having considered the family resemblances test under *Reves*, we conclude that the notes do not resemble instruments on the *Reves* list, and the evidence does not establish that they should be a category added to that list. Accordingly, we find that the Debt Investments are securities subject to the antifraud provisions of the Act.[301]

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[295] Tr. at 118-119.

[296] *See* A.R.S. § 44-1843.02(8), which creates an exemption for some commercial paper from the Act's registration requirements, but does not exclude it from being a security.

[297] Tr. at 22-23, 78, 102.

[298] *Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1539 (10th Cir. 1993).

[299] Exh. S-30.

[300] Respondents' Post-Hearing Brief at 4-5.

[301] Having held that the Debt Investments are securities in the form of notes, we need not consider whether the Debt Investments are evidence of indebtedness or investment contracts.

2. Credit Use Investments

The Division argues that the Credit Use Investments are securities in the form of investment contracts. The Division applies the *Howey*[302] test to determine the Credit Use Investments are investment contracts if they involve an investment of money in a common enterprise with the expectation of profits from the managerial efforts of others. The Division argues that all three elements of the *Howey* test has been met because: Ms. Salmon invested money for the Credit Use Investments, Ms. Salmon's investment funds were pooled with other investment funds, and Ms. Salmon expected profits based upon the managerial efforts of Mr. Eckerman. The Respondents raise no contentions as to whether the Credit Use Investments are investment contracts.

Investment contracts are included within the statutory definition of a security.[303] The elements of what constitutes an investment contract have been set forth in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946), adopted as law in Arizona in *Rose v. Dobras*, 128 Ariz. 209, 624 P.2d 887 (App. 1981). Under *Howey* and *Rose*, an investment contract will be found in "any situation where (1) individuals are led to invest money (2) in a common enterprise (3) with the expectation that they will earn a profit solely through the efforts of others."[304] A common enterprise will be found when there exists horizontal commonality, which "requires a pooling of funds collectively managed by a promoter or third party"[305] The third prong of *Howey*, the efforts of others, requires that "'the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.'"[306]

The Credit Use Investments meet the first prong of the *Howey* test because Ms. Salmon used her credit to borrow money that she gave to Luxury as an investment.[307] The Credit Use Investments were part of a common enterprise as the funds from the Credit Use Investments were deposited into the same Luxury bank account where the Debt Investments were pooled, from which Ms. Salmon expected her Credit Use Investment funds to be used in the same manner as the Debt Investment

[302] *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946).
[303] A.R.S. § 44-1801(26).
[304] *Rose*, 128 Ariz. at 211, 624 P.2d at 889.
[305] *Daggett v. Jackie Fine Arts, Inc.*, 152 Ariz. 559, 565, 733 P.2d 1142, 1148 (App. 1986).
[306] *Nutek Info. Sys., Inc. v. Arizona Corp. Comm'n*, 194 Ariz. 104, 108, ¶ 18, 977 P.2d 826, 830 (App. 1998) (quoting *S.E.C. v. Glenn W. Turner Enters. Inc.*, 474 F.2d 476, 482 (9th Cir. 1973)).
[307] Tr. at 37, 68.

funds.[308] Ms. Salmon expected to receive a profit from the Credit Use Investments in the form of monthly credit use fees that she was to be paid.[309] Ms. Salmon had no control over how Luxury spent the Credit Use Investments funds, rather she relied entirely on Mr. Eckerman's management.[310] The Credit Use Investments meet the elements set forth under *Howey*, making them investment contracts and, therefore, securities.

3. Stock

The Division contends that the "Future Options" provisions, found in the Debt Investment loan agreement documents for Mr. Bell and Mr. Holland, created additional securities in the form of receipt for, or the right to subscribe to, stock.[311] The Respondents argue that these options, conditioned upon Luxury deciding to offer stock, were speculative and unenforceable provisions for which there was no obligation to provide stock and no purported terms of purchase. The Division notes that the agreements do not set terms for a future purchase because the investments made by Mr. Bell and Mr. Holland entitled them to each automatically receive 10% of Luxury's stock, if issued, at no additional cost.[312] The Division cites a Second Circuit case, *In re Lehman Brothers Holdings Inc.*, that held contingent stock rights are securities, noting that the definition of a security under the Bankruptcy Code[313] "makes no distinction between conditional rights and absolute rights."[314]

The definition of "security" under the Act includes stock as well as the "receipt for, guarantee of, or warrant or right to subscribe to or purchase" stock.[315] The Future Options provisions, identical in the Commercial Paper Loan Agreement forms for both Mr. Bell and Mr. Holland, read in pertinent part, "Should [Luxury], in the normal course of business, decide to offer stock or stock options either privately or via a national, public stock exchange, Lender shall receive an amount of un-dilutable stock in the equivalent of 10%."[316] The Respondents correctly note that the receipt of stock under the Future Options provision was contingent. However, the definition of "security" under the Act, much like the

[308] Tr. at 38; Exhs. S-4, S-15, S-18, S-21.
[309] Tr. at 38-39, 68; Exh. S-19, S-20.
[310] Tr. at 39.
[311] Exhs. S-8 at ACC006964, S-12 at ACC006983.
[312] *Id.*
[313] 11 U.S.C. § 101(49)(A)(xv).
[314] *In re Lehman Bros. Holdings Inc.*, 855 F.3d 459, 473, n.16 (2d Cir. 2017).
[315] A.R.S. § 44-1801(27)(a).
[316] Exhs. S-8 at ACC006964, S-12 at ACC006983.

definition considered by the Second Circuit in *Lehman Brothers*, does not distinguish conditional rights from absolute rights. Arizona courts "give a liberal construction to the term 'security.'"[317] The Future Options provisions guaranteed Mr. Bell and Mr. Holland ten percent each of Luxury stock, conditioned upon Luxury's decision to offer stock or stock options. We find no support for the Respondents' argument that the contingent nature of this right to stock excludes it from the definition of a security under the Act. We conclude that the Future Options provisions created securities in the form of guarantees of, and the right to subscribe to, stock.

B. Offers and Sales of Securities Within or from Arizona

Having concluded that the Debt Investments, Credit Use Investments, and Future Options in stock are all securities, we may find registration and fraud violations under the Act, pursuant to A.R.S. §§ 44-1841, 44-1842, and 44-1991(A), if the securities were offered or sold within or from Arizona.

1. Offers and Sales

The Division contends that Luxury and Mr. Eckerman offered and sold securities within and from Arizona. The Act defines "sell" to include any "disposition of a security … for value"[318] and "offer to sell" as including "an attempt or offer to dispose of, or solicitation of an order or offer to buy, a security … for value."[319]

The Division argues that Luxury and Mr. Eckerman offered and sold the securities to the investors by persuading them to invest.[320] The Division argues that we can infer that Mr. Eckerman executed the Debt Investments for Mr. Bell and Mr. Holland on behalf of Luxury because: the signature on the Debt Investments is similar to Mr. Eckerman's signature on a bank account signature card;[321] the testimony of Mr. Eckerman;[322] and Mr. Eckerman having identified himself as the CEO to Mr. Holland, which corresponds with "CEO" having been written next to the signature on Mr. Holland's Debt Investment document.[323]

The Division contends that Luxury participated in the sales of securities to Ms. Salmon,

[317] *Siporin v. Carrington*, 200 Ariz. 97, 101, ¶ 18, 23 P.3d 92, 96 (App. 2001).
[318] A.R.S. § 44-1801(22).
[319] A.R.S. § 44-1801(16).
[320] Tr. at 20, 34, 74-76, 104.
[321] Exhs. S-7, S-11, S-24.
[322] Tr. at 171-172.
[323] Tr. at 100-101; Exh. S-7.

pursuant to A.R.S. § 44-2003(A). Under A.R.S. § 44-2003(A), the Act provides for joint and several liability against any person who made, participated in or induced the unlawful sale or purchase of a security.[324] In applying A.R.S. § 44-2003(A), the word "participate" has been found to mean "'to take part in something (an enterprise or activity) … in common with others,' or 'to have a share or part in something.'"[325] The Division contends that Ms. Salmon intended to make her Debt Investment and Credit Use Investments in Luxury, but Mr. Eckerman persuaded her to accept investment documentation from STLF.[326] The Division argues that if this change meant Luxury was not the issuer or seller of the securities, Luxury still participated in the sales to Ms. Salmon because Luxury received the proceeds of her investments.[327]

The Respondents raise no contentions regarding the offers or sales to Mr. Bell and Mr. Holland. The Respondents contend that Ms. Salmon's purchases were made from STLF and "[n]othing shows why she paid Luxury, but receipt of the funds does not make Luxury liable for the obligation."[328] The Division counters that Ms. Salmon testified that Mr. Eckerman persuaded her to invest her life's savings in Luxury,[329] and to use cash advances, bank loans, and credit cards to make further investments in Luxury.[330] The Division notes that the money from Ms. Salmon's investments was received by Luxury.[331] The Division argues that Luxury offered and sold securities to Ms. Salmon by asking her, through Mr. Eckerman, to invest in Luxury and by accepting her investment funds. The Division further argues that by receiving Ms. Salmon's investment funds, Luxury participated in the sale of securities to Ms. Salmon and Luxury, therefore, is liable for the sale, pursuant to A.R.S. § 44-2003(A).

The record establishes that Mr. Eckerman and Luxury offered and sold the Debt Investments to Mr. Bell and Mr. Holland. The Debt Investment documents for Mr. Bell and Mr. Holland included the provisions for the Future Options of Luxury stock. The definition of "sale" of a security under the Act states that "[a] security given or delivered with, or as a bonus on account of, a purchase of securities

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[324] A.R.S. § 44-2003(A).
[325] *Id.* at 175, ¶ 21, 236 P.3d at 402, citing *Standard Chartered PLC v. Price Waterhouse*, 190 Ariz. 6, 21, 945 P.2d 317, 332 (App. 1996), as corrected on denial of reconsideration (Jan. 13, 1997).
[326] Tr. at 33, 42-43, 45.
[327] Tr. at 27-28, 36-37, 40-45.
[328] Respondents' Post-Hearing Brief at 5.
[329] Tr. at 20, 22-23, 26, 167-168.
[330] Tr. at 34, 37, 167-168.
[331] Tr. at 35-36, 68; Exhs. S-18, S-21.

... shall be conclusively presumed to constitute a part of the subject of the purchase and to have been sold for value."[332] The definition of an "offer for sale" of a security under the Act includes "any sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer."[333] By definition, we find that the Future Options of Luxury stock were also offered and sold by Mr. Eckerman and Luxury to Mr. Bell and Mr. Holland.

As noted by the Respondents, the documents for the Debt Investment and Credit Use Investments made by Ms. Salmon were executed by STLF.[334] However, Ms. Salmon testified that Mr. Eckerman asked her to make the Debt Investment and Credit Use Investments with Luxury.[335] We may also make an adverse inference from Mr. Eckerman's invocation of his Fifth Amendment privilege when asked about speaking with and trying to convince Ms. Salmon to invest in Luxury.[336] The "Commercial Paper" and "Commercial Paper Loan Agreement" documents for Ms. Salmon's Debt Investment were executed on January 16, 2019, over a month after Ms. Salmon's Debt Investment funds had been received in Luxury's bank account.[337] The "Personal Credit Use Agreement" documents for Ms. Salmon's Credit Use Investments were executed on March 21, 2019, even though funds from the Credit Use Investments were received in Luxury's bank account over the course of several days in January 2019.[338] While STLF was named on the Debt Investment and Credit Use Investment documents, the record establishes that Luxury and Mr. Eckerman offered and sold the Debt Investment and Credit Use Investments to Ms. Salmon.

2. Within or From Arizona

The Division contends that the offers and sales of securities made by Luxury and Mr. Eckerman to the investors were made from Arizona. The Division notes that Luxury is an Arizona limited liability company that had its offices in Arizona when the investments were made between November 2018 and

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[332] A.R.S. § 44-1801(22).
[333] A.R.S. § 44-1801(16).
[334] Exhs. S-16, S-17, S-19, S-20.
[335] Tr. at 20, 34, 37, 167-168.
[336] Tr. at 167-168. "[A] witness or party in a civil case can invoke their Fifth Amendment privilege against self-incrimination ... but the trier of fact is free to infer the truth of the charged misconduct." *Castro v. Ballesteros-Suarez*, 222 Ariz. 48, 53, ¶ 20, 213 P.3d 197, 202 (App. 2009).
[337] Exhs. S-16, S-17, S-18.
[338] Exhs. S-19, S-20, S-21.

January 2019.[339] The Division further notes that Mr. Eckerman was an Arizona resident during this timeframe.[340] The Division further contends that the securities sales made to Ms. Salmon were made within Arizona as Ms. Salmon was an Arizona resident at the time.[341] The Respondents raise no contentions regarding whether the sales of securities were made within or from Arizona.

Registration and fraud violations under the Act, pursuant to A.R.S. §§ 44-1841, 44-1842, and 44-1991(A), can be found when securities are offered or sold "within or from this state." The evidence of record establishes that the sales of securities made by Luxury and Mr. Eckerman were made within and/or from Arizona.

C. Registration Violations

Under A.R.S. § 44-1841, it is unlawful to sell or offer for sale within or from Arizona any securities unless those securities have been registered or are exempt from registration. Luxury's Debt Investments, Credit Use Investments, and Future Options for stock were not registered with the Commission.[342] Under A.R.S. § 44-1842, it is unlawful for any dealer or salesman to sell or offer to sell any securities within or from Arizona unless the dealer or salesman is registered. Luxury was not registered as a securities dealer and Mr. Eckerman was not registered as a securities dealer or salesman.[343] The Division contends that Mr. Eckerman and Luxury violated A.R.S. §§ 44-1841(A) and 44-1842(A) with each of the security sales.

We have determined, *supra*, that the Debt Investments, Credit Use Investments, and Future Options for stock are securities which are not exempt from registration requirements. We have also found that Mr. Eckerman and Luxury sold three Debt Investments, two Credit Use Investments, and two Future Options for stock. The evidence of record establishes that Mr. Eckerman and Luxury committed seven violations of A.R.S. § 44-1841(A) and seven violations of A.R.S. § 44-1842(A) from their sales of Debt Investments, Credit Use Investments, and Future Options for stock.

D. Fraud Violations

The Division contends that Luxury and Mr. Eckerman engaged in multiple violations of the

[339] Notice at ¶¶ 2, 9; Luxury Answer at ¶¶ 2, 9; Eckerman Answer at ¶¶ 2, 9; MTE Answer at ¶¶ 2, 9.
[340] Notice at ¶ 6; Eckerman Answer at ¶ 6.
[341] Exhs. S-16, S-19, S-20.
[342] Exh. S-1.
[343] Exh. S-1; Notice at ¶ 6; Eckerman Answer at ¶ 6.

antifraud provisions of the Act, A.R.S. § 44-1991(A). A.R.S. § 44-1991 provides, in pertinent part:

> It is a fraudulent practice and unlawful for a person, in connection with a transaction or transactions within or from this state involving an offer to sell or buy securities, or a sale or purchase of securities, including securities exempted under section 44-1843 or 44-1843.01 and including transactions exempted under section 44-1844, 44-1845 or 44-1850, directly or indirectly to do any of the following:
>
> 1. Employ any device, scheme or artifice to defraud.
> 2. Make any untrue statement of material fact, or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
> 3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit.

An issuer of securities has an affirmative duty not to mislead potential investors.[344] Under A.R.S. § 44-1991(A)(2), a material fact is one that "would have assumed actual significance in the deliberations of the reasonable buyer."[345] The test does not require an omission or misstatement to actually have been significant to a particular buyer.[346] Materiality will also be found when there is a "substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available."[347]

The Division contends that Luxury and Mr. Eckerman violated A.R.S. § 44-1991(A)(2) through the omission of the following material facts to the investors: 1) that Mr. Eckerman was subject to temporary cease and desist orders; 2) that Mr. Eckerman's prior companies failed to repay investors; and 3) that Luxury's house rentals were threatened by injunction litigation. The Respondents raise no contentions pertaining to the violations of A.R.S. § 44-1991(A)(2) alleged by the Division.

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[344] *Trimble v. Am. Sav. Life Ins. Co.*, 152 Ariz. 548, 553, 733 P.2d 1131, 1136 (App. 1986).
[345] *Aaron v. Fromkin*, 196 Ariz. 224, 227 ¶ 14, 994 P.2d 1039, 1042 (App. 2000).
[346] *Hirsch v. Arizona Corp. Comm'n*, 237 Ariz. 456, 464 ¶ 27, 352 P.3d 925, 933 (App. 2015).
[347] *Caruthers v. Underhill*, 230 Ariz. 513, 524 ¶ 43, 287 P.3d 807, 818 (App. 2012) (internal quotations omitted).

1. Temporary Cease and Desist Orders

The Division contends that Luxury and Mr. Eckerman violated A.R.S. § 44-1991(A)(2) by failing to disclose to Ms. Salmon, Mr. Bell, and Mr. Holland that Mr. Eckerman was subject to two temporary cease and desist orders. The Division argues that this was a misleading and material omission because it raised questions about whether Luxury's securities offerings were unlawful like Mr. Eckerman's previous securities offerings.

On December 12, 2016, the Commission issued a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("First Temporary Order") alleging that Mr. Eckerman and his company, PAMG, were selling securities in violation of the Act.[348] The First Temporary Order ordered Mr. Eckerman to cease and desist from any violations of the Act.[349] The First Temporary Order remains in effect.[350] On December 29, 2017, the Commission issued a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("Second Temporary Order") alleging that Mr. Eckerman and his company, Pacific, were selling securities in violation of the antifraud provisions of the Act.[351] The Second Temporary Order ordered Mr. Eckerman to cease and desist from any violations of the Act.[352] The Second Temporary Order was in effect against Mr. Eckerman until March 13, 2019, when the Commission permanently ordered that he cease and desist from any violations of the Act.[353]

The record establishes that Luxury and Mr. Eckerman did not disclose the existence of the First Temporary Order and Second Temporary Order to Ms. Salmon, Mr. Bell, and Mr. Holland before they made their investments.[354] Ms. Salmon, Mr. Bell, and Mr. Holland all testified that this information would have been significant to their decisions to invest in Luxury.[355] We find that a reasonable investor would have considered significant that Mr. Eckerman was subject to two cease and desist orders of the Commission for violations of the Act. We further find that the omission of information pertaining to

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[348] The Commission takes administrative notice of *Premier Asset Management Group*, Temporary Order to Cease and Desist and Notice of Opportunity for Hearing dated December 12, 2016, A.C.C. Docket No. S-20996A-16-0467.
[349] First Temporary Order at 5.
[350] The Commission takes administrative notice that no final order has been issued in *Premier Asset Management Group*, A.C.C. Docket No. S-20996A-16-0467.
[351] The Commission takes administrative notice of *Pacific Capital Enterprises*, Temporary Order to Cease and Desist and Notice of Opportunity for Hearing dated December 29, 2017, A.C.C. Docket No. S-21035A-17-0391.
[352] Second Temporary Order at 6.
[353] Decision No. 77117 at 4.
[354] Tr. at 45, 78, 105.
[355] Tr. at 45-46, 78, 105.

the existence of the First Temporary Order and the Second Temporary Order made misleading the representations Mr. Eckerman and Luxury made to Ms. Salmon, Mr. Bell, and Mr. Holland.

2. Failure of Prior Companies to Repay Investors

The Division contends that Mr. Eckerman is a grifter who has managed a series of real estate companies that raised money from investors without repaying those investors. The Division contends that Luxury and Mr. Eckerman violated A.R.S. § 44-1991(A)(2) by failing to disclose to Ms. Salmon, Mr. Bell, and Mr. Holland that Mr. Eckerman's prior companies did not repay their investors. The Division argues that this was a misleading and material omission because it raised questions as to whether the Luxury investors would be repaid and because it contradicted Mr. Eckerman's claim of previously having made a lot of money for investors in a company similar to Luxury.

The record established that before Luxury, Mr. Eckerman managed several companies that failed to repay investors: PAMG, International Asset Management Group, Residential Asset Management, and Novus Dia.[356] Luxury and Mr. Eckerman did not disclose to Ms. Salmon, Mr. Bell, and Mr. Holland before they made their investments that Mr. Eckerman's previous companies had failed to repay investors.[357] Ms. Salmon, Mr. Bell, and Mr. Holland all testified that this information would have been significant to their decisions to invest in Luxury.[358] We find that a reasonable investor would have considered significant that Mr. Eckerman's prior companies had not repaid investors. We further find that the omission of this information about Mr. Eckerman's prior companies made misleading the representations Mr. Eckerman and Luxury made to Ms. Salmon, Mr. Bell, and Mr. Holland.

3. Injunction Litigation Against Luxury

The Division contends that Luxury and Mr. Eckerman violated A.R.S. § 44-1991(A)(2) by failing to disclose to Ms. Salmon, Mr. Bell, and Mr. Holland that pending litigation sought to enjoin the short-term rental of two of Luxury's properties. The Division argues that this was a misleading and material omission because this litigation threatened the majority of Luxury's real estate rentals, which would in turn threaten Luxury's ability to repay investors.

[356] Tr. at 135-136, 154, 157, 160-164; Exhs. S-24, S-31 at 372-385, 389-392, 396, S-100
[357] Tr. at 46, 78, 105.
[358] Tr. at 46, 78-79, 105.

On July 19, 2018, a homeowners association filed a complaint in Maricopa County Superior Court seeking a permanent injunction barring future rental of two of Luxury's rental properties.[359] A significant portion of Luxury's rental income came from these two properties.[360] Luxury and Mr. Eckerman did not disclose this pending litigation to Ms. Salmon, Mr. Bell, and Mr. Holland before they made their investments.[361] Ms. Salmon, Mr. Bell, and Mr. Holland all testified that this information would have been significant to their decisions to invest in Luxury.[362] We find that a reasonable investor would have considered significant that two of Luxury's rental properties were subject to litigation seeking to enjoin their use as rentals. We further find that the omission of this information about pending litigation made misleading the representations Mr. Eckerman and Luxury made to Ms. Salmon, Mr. Bell, and Mr. Holland.

E. Control Person Liability

The Division contends that Mr. Eckerman and MTE were controlling persons of Luxury and they should be jointly and severally liable for Luxury's fraud violations under the Act. Under A.R.S. § 44-1999(B), "Every person who, directly or indirectly, controls any person liable for a violation of section 44-1991 or 44-1992 is liable jointly and severally with and to the same extent as the controlled person to any person to whom the controlled person is liable unless the controlling person acted in good faith and did not directly or indirectly induce the act underlying the action." For the purposes of A.R.S. § 44-1999(B), a person may include an individual, corporation or limited liability company.[363] In *E. Vanguard Forex, Ltd. v. Arizona Corp. Comm'n*, the Arizona Court of Appeals interpreted A.R.S. § 44-1999(B) "as imposing presumptive control liability on persons who have the *power* to directly or indirectly control the activities of those persons or entities liable as primary violators of [A.R.S.] §§ 44–1991 and –1992."[364] Therefore, to establish control "the evidence need only show that the person targeted as a controlling person had the legal power, either individually or as part of a control group,

[359] Notice at ¶ 24; Luxury Answer at ¶ 24; Eckerman Answer at ¶ 24; MTE Answer at ¶ 24.
[360] Exh. S-26.
[361] Tr. at 46, 79, 106.
[362] Tr. at 47, 79, 106.
[363] A.R.S. § 44-1801(16).
[364] *E. Vanguard Forex, Ltd. v. Arizona Corp. Comm'n*, 206 Ariz. 399, 412, 79 P.3d 86, 99 (App. 2003) (Emphasis in original).

to control the activities of the primary violator."[365]

The Division contends that Mr. Eckerman and MTE had the power to control Luxury and, therefore, are liable for Luxury's securities fraud violations. The Division notes that MTE had absolute control over Luxury because Luxury was a member-managed company with MTE as the sole member.[366] The Division contends that Mr. Eckerman controlled Luxury through his position as a trustee of MTE.[367] The Division argues that Mr. Eckerman's control of Luxury was evidenced by Mr. Eckerman having presented himself as the CEO and president of Luxury and by his making every decision for Luxury.[368] The Respondents have raised no contentions in response to the allegations of control person liability.

The evidence of record establishes that both MTE and Mr. Eckerman had the power to control Luxury. MTE and Mr. Eckerman bore the burden to prove the affirmative defense of having acted in good faith and not directly or indirectly inducing the acts underlying the action. MTE and Mr. Eckerman failed to meet their burden of proof. We find that MTE and Mr. Eckerman are liable as control persons for the antifraud violation of Luxury, pursuant to A.R.S. § 44-1999(B).

F. Marital Community Liability

The Division contends that the marital community of the Eckermans is subject to any order of restitution or administrative penalties. The Eckermans raise no contentions regarding liability of the marital community.

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[365] *Id.*
[366] Notice at ¶¶ 2, 34; Luxury Answer at ¶¶ 2, 34; Eckerman Answer at ¶¶ 2, 34; MTE Answer at ¶¶ 2, 34.
[367] Tr. at 167; Exh. S-6 at PCE01088.
[368] Tr. at 26, 87, 100-101, 172.

The Commission has the authority to join a spouse in an action to determine the liability of the marital community.[369] With limited exceptions, all property acquired by either the husband or the wife during marriage is the community property of both husband and wife.[370] The Arizona Supreme Court has found that "the presumption of law is, in the absence of the contrary showing, that all property acquired and all business done and transacted during coverture, by either spouse, is for the community."[371]

Under A.R.S. § 25-214(B), "spouses have equal management, control and disposition rights over their community property and have equal power to bind the community."[372] Either spouse may

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[369] **A.R.S. § 44-2031. Jurisdiction and venue of offenses and actions; joinder of spouse**

A. The superior court in this state shall have jurisdiction over violations of this chapter, the rules and orders of the commission under this chapter and all actions brought to enforce any liability or duty created under this chapter, except actions or proceedings brought under section 44-2032, paragraph 2, 3 or 4 or appeals filed under article 12 of this chapter, over which the superior court in Maricopa county shall have exclusive jurisdiction.

B. Any action authorized by this chapter may be brought in the county in which the defendant is found, is an inhabitant or transacts business, or in the county where the transaction took place, and in such cases, process may be served in any other county in which the defendant is an inhabitant or in which the defendant is found.

C. The commission may join the spouse in any action authorized by this chapter to determine the liability of the marital community. This subsection does not authorize the commission to join any individual who is divorced from the defendant at the time an action authorized by this chapter is filed.

[370] **A.R.S. § 25-211. Property acquired during marriage as community property; exceptions; effect of service of a petition**

A. All property acquired by either husband or wife during the marriage is the community property of the husband and wife except for property that is:
   1. Acquired by gift, devise or descent.
   2. Acquired after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.

B. Notwithstanding subsection A, paragraph 2, service of a petition for dissolution of marriage, legal separation or annulment does not:
   1. Alter the status of preexisting community property.
   2. Change the status of community property used to acquire new property or the status of that new property as community property.
   3. Alter the duties and rights of either spouse with respect to the management of community property except as prescribed pursuant to section 25-315, subsection A, paragraph 1, subdivision (a).

[371] *Johnson v. Johnson*, 131 Ariz. 38, 45, 638 P.2d 705, 712 (1981), *citing Benson v. Hunter*, 23 Ariz. 132, 134-35, 202 P. 233, 233-34 (1921).

[372] **A.R.S. § 25-214. Management and control**

A. Each spouse has the sole management, control and disposition rights of each spouse's separate property.

B. The spouses have equal management, control and disposition rights over their community property and have equal power to bind the community.

C. Either spouse separately may acquire, manage, control or dispose of community property or bind the community, except that joinder of both spouses is required in any of the following cases:
   1. Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented mining claim or a lease of less than one year.
   2. Any transaction of guaranty, indemnity or suretyship.
   3. To bind the community, irrespective of any person's intent with respect to that binder, after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal separation or annulment.

contract debts and otherwise act for the benefit of the community except as prohibited under A.R.S. § 25-214.[373] "[A] debt is incurred at the time of the actions that give rise to the debt."[374] "In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or obligation."[375] "A debt incurred by a spouse during marriage is presumed to be a community obligation; a party contesting the community nature of a debt bears the burden of overcoming that presumption by clear and convincing evidence."[376]

The Eckermans have been married since at least June 21, 2018.[377] The securities law violations committed by Mr. Eckerman occurred while he was married to Mrs. Eckerman. Any debt created by an order for restitution and administrative penalties arising from the violations committed by Mr. Eckerman would be considered as having been incurred at the time of the violation. No evidence has been presented to rebut the legal presumption that such debt would be a liability of the marital community.

G. Remedies

The Division contends that the Respondents should pay restitution and administrative penalties for their violations of the Act. The Division also seeks the entry of a cease and desist order against the Respondents for future violations.

1. Restitution

The Division requests that the Commission order the Respondents to pay restitution in the

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[373] **A.R.S. § 25-215. Liability of community property and separate property for community and separate debts**

A. The separate property of a spouse shall not be liable for the separate debts or obligations of the other spouse, absent agreement of the property owner to the contrary.

B. The community property is liable for the premarital separate debts or other liabilities of a spouse, incurred after September 1, 1973 but only to the extent of the value of that spouse's contribution to the community property which would have been such spouse's separate property if single.

C. The community property is liable for a spouse's debts incurred outside of this state during the marriage which would have been community debts if incurred in this state.

D. Except as prohibited in section 25-214, either spouse may contract debts and otherwise act for the benefit of the community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or obligation.

[374] *Arab Monetary Fund v. Hashim*, 219 Ariz. 108, 111, 193 P.3d 802, 805 (Ct. App. 2008).

[375] A.R.S. § 25-215(D).

[376] *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92, 919 P.2d 179, 186-87 (Ct. App. 1995).

[377] Notice at ¶ 7; Eckerman Answer at ¶ 7.

amount of $733,606.53. The Division reaches this amount based upon $795,000 of investments made from November 2018 to January 2019, less $61,393.47 of repayments.[378]

The Division contends that Mr. Bell and Mr. Holland are due restitution on their investments even though their investment interests were transferred to STLF. The Division contends that Mr. Bell and Mr. Holland have not been fully repaid on their investments and they received no cash pursuant to the transfer of the investments from Luxury to STLF.[379] The Division argues that the interest payments made by STLF to Mr. Bell and Mr. Holland should be credited as distributions on the Luxury securities,[380] but that the transfer of "investment interests from Luxury to STLF was just a shell game by [Mr.] Eckerman" and should not relieve the Respondents of their restitution responsibilities.[381]

The Respondents raise no contentions regarding restitution other than to state that they should not be liable for Ms. Salmon's investments as she made her purchases from STLF. We have rejected this argument, *supra*.

The Commission has the authority to order restitution pursuant to A.R.S. § 44-2032.[382] The record establishes that Ms. Salmon, Mr. Bell, and Mr. Holland invested a combined $795,000 in Luxury and received combined returns totaling $61,393.47, leaving a remaining principal amount of $733,606.53.[383] Accordingly, the Respondents are liable for restitution in the amount of $733,606.53, plus interest.

2. Administrative Penalties

The Division asserts that the Commission may assess an administrative penalty of up to $5,000 for each violation of the Act. The Division recommends that the Commission order administrative

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[378] Tr. at 83; Exh. S-30.
[379] Tr. at 82, 85-86, 109, 173; Exhs. S-7, S-11, S-30.
[380] Exhs. S-9, S-13, S-30.
[381] Division's Post-Hearing Brief at 21.
[382] A.R.S. § 44-2032 provides, in pertinent part:

> If it appears to the commission, either on complaint or otherwise, that any person has engaged in, is engaging in or is about to engage in any act, practice or transaction that constitutes a violation of this chapter, or any rule or order of the commission under this chapter, the commission, in its discretion may:
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> 1. Issue an order directing such person to cease and desist from engaging in the act, practice or transaction, or doing any other act in furtherance of the act, practice or transaction, and to take appropriate affirmative action within a reasonable period of time, as prescribed by the commission, to correct the conditions resulting from the act, practice or transaction including, without limitation, a requirement to provide restitution as prescribed by rules of the commission. …

[383] Exh. S-50.

penalties of $70,000 against Luxury, $100,000 against Mr. Eckerman as a community obligation, and $70,000 against MTE. The Division does not correlate those amounts with the number of violations of the Act committed by the Respondents. The Division states that it recommends a significant penalty because Mr. Eckerman has repeatedly failed to abide by the Act and the cease and desist orders against him. The Respondents raise no contentions in response to the Division's recommendation of administrative penalties.

Under A.R.S. § 44-2036(A), the Commission has authority to assess an administrative penalty of no more than $5,000 for each violation committed.[384] We have found that Luxury and Mr. Eckerman violated A.R.S. §§ 44-1841 and 44-1842, in the sale of three Debt Investments, two Credit Use Investments, and two Future Options for stock. We have also found that Luxury and Mr. Eckerman violated the Act's antifraud provisions, A.R.S. § 44-1991(A), with regard to all seven of these sales. We find Mr. Eckerman's history of securities violations and disregard of cease and desist orders against him to constitute significant aggravating factors. The record does not present any mitigating factors. We find appropriate to order an administrative penalty of $70,000 against Luxury, of which $35,000 is apportioned to antifraud violations. We find appropriate to order an administrative penalty of $100,000 against Mr. Eckerman. As the record does not establish that MTE directly offered or sold securities, we refuse to adopt the Division's recommended administrative penalty against MTE. However, as control persons of Luxury, MTE and Mr. Eckerman are liable for Luxury's antifraud violations.

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Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. Luxury is a manager managed limited liability company organized under the law of the state of Arizona in June 2018.[385] Since Luxury's creation, MTE has been its sole member.[386]

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[384] A.R.S. § 44-2036 provides, in pertinent part:
A. A person who, in an administrative action, is found to have violated any provision of this chapter or any rule or order of the commission may be assessed an administrative penalty by the commission, after a hearing, in an amount of not to exceed five thousand dollars for each violation.

[385] Notice at ¶ 2; Luxury Answer at ¶ 2; Eckerman Answer at ¶ 2; MTE Answer at ¶ 2.

[386] Notice at ¶ 34; Luxury Answer at ¶ 34; Eckerman Answer at ¶ 34; MTE Answer at ¶ 34.

2. Luxury is a real estate rental company that manages short-term luxury real estate rentals in Arizona.[387] Luxury's offices were located in Arizona from at least July 5, 2018, to at least July 31, 2019.[388]

3. MTE is a trust that was formed prior to March 30, 2017.[389] The Eckermans have been trustees of the trust since at least March 30, 2017.[390]

4. Michael Barry Eckerman ran Luxury, made all of Luxury's decisions, and held himself out as Luxury's president and CEO.[391] Mr. Eckerman was a signer on Luxury's bank account since at least October 27, 2018, and he had a debit card for Luxury's bank account since at least November 21, 2018.[392] Since at least June 2018, Mr. Eckerman has been an Arizona resident and he has been married to Tonya Eckerman.[393]

5. In November and December 2018, Luxury raised $595,000 by selling instruments ("Debt Investments") offering monthly interest payments at a rate of 12% or 20% annually to three investors, Chris Bell, Glenn Holland, and Lois Salmon.[394] Luxury presented the Debt Investments as "commercial paper" issued in exchange for loans to Luxury.[395] Before Mr. Bell and Mr. Holland each invested $250,000 in November 2018, Luxury's bank account had a balance of $27.60.[396] Ms. Salmon paid her life's savings, $95,000, to Luxury for her Debt Investment in December 2018.[397] Ms. Salmon expected to receive the same Debt Investment documentation from Luxury that Mr. Bell and Mr. Holland received.[398]

6. Luxury employed persons to solicit purchases of Debt Investments from their personal networks: Ms. Salmon worked in this capacity and tried to find investors from her personal network;[399] Mr. Bell and Mr. Holland were approached about the Debt Investment by a business acquaintance

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[387] Notice at ¶ 9; Luxury Answer at ¶ 9; Eckerman Answer at ¶ 9; MTE Answer at ¶ 9.
[388] Notice at ¶ 3; Luxury Answer at ¶ 3; Eckerman Answer at ¶ 3; MTE Answer at ¶ 3.
[389] Notice at ¶ 4; Eckerman Answer at ¶ 4; MTE Answer at ¶ 4.
[390] Tr. at 167; Exh. S-6 at PCE1088.
[391] Tr. at 26, 87.
[392] Notice at ¶ 10; Luxury Answer at ¶ 10; Eckerman Answer at ¶ 10; MTE Answer at ¶ 10; Exh. S-4.
[393] Notice at ¶¶ 6, 7; Eckerman Answer at ¶¶ 6, 7; MTE Answer at ¶¶ 6, 7.
[394] Tr. at 22-23, 82-83, 109-110; Exhs. S-7, S-11, S-16, S-30.
[395] Exhs. S-7, S-11, S-16.
[396] Exhs. S-15 at 2, S-30.
[397] Tr. at 20, 22-23, 26-28, 31; Exh. S-18.
[398] Tr. at 25-26, 32-33.
[399] Tr. at 17.

working for Luxury.[400] Mr. Eckerman trained Ms. Salmon in pitching the Debt Investments to potential investors by telling them that Luxury would be investing in mansions and expensive cars, that Luxury was earning significant revenue by renting these assets, and that the mansions would serve as collateral for investors' money.[401]

7. In October 2018, Mr. Eckerman spoke by phone with Mr. Bell and Mr. Holland, telling them about Luxury's business and the company's success, stating that Luxury owned and rented three properties and wanted to raise money to purchase a fourth.[402] In a second phone call, Mr. Eckerman told Mr. Bell and Mr. Holland that Mr. Eckerman was highly successful and he had made a lot of money for investors before in a similar company.[403]

8. The documents for the Debt Investments purchased by Mr. Bell and Mr. Holland included identical "Future Options" provisions that stated "[s]hould [Luxury], in the normal course of business, decide to offer stock or stock options either privately or via a national, public stock exchange, Lender shall receive an amount of un-dilutable stock in the equivalent of 10%."[404]

9. In early 2019, Mr. Eckerman told Mr. Bell and Mr. Holland that because of an issue with the government, it would be best to transfer their investments from Luxury to STLF.[405] Mr. Bell and Mr. Holland received no money as part of the transfer of the investments from Luxury to STLF.[406]

10. Mr. Eckerman urged Ms. Salmon to made additional investments in Luxury with funds obtained from bank loans and credit card advances ("Credit Use Investments").[407] Ms. Salmon invested $200,000, monies she obtained from bank loans and credit card advances, in Luxury Credit Use Investments in January 2019, in exchange Luxury and Mr. Eckerman agreed to pay the loans and pay Ms. Salmon a profit in the form of monthly usage fees for the use of her personal credit.[408]

11. After Ms. Salmon invested, and before Luxury issued her Debt Investment and Credit Use Investment documents, Mr. Eckerman told her that because of some issues with Luxury, the

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[400] Tr. at 74, 97.
[401] Tr. at 18-19.
[402] Tr. at 74-75.
[403] Tr. at 76, 104.
[404] Exhs. S-8 at ACC006964, S-12 at ACC006983.
[405] Tr. at 81-82, 108, 172-173.
[406] Tr. at 82, 85-86, 109, 112, 173.
[407] Tr. at 34.
[408] Tr. at 36-38; Exh. S-30.

documentation would be issued by STLF.[409]

12. Mr. Eckerman previously managed and controlled PAMG, a real estate company that had raised over $4,528,000 from dozens of investors between approximately April 2015 and April 2017.[410] Before November 2018, PAMG failed to make timely payments to at least five of its investors.[411] Before PAMG, Mr. Eckerman managed several other real estate companies that failed in the face of regulatory scrutiny without repaying investors, including companies known as International Asset Management Group, Residential Asset Management, and Novus Dia.[412]

13. Prior to investing in Luxury, Ms. Salmon, Mr. Bell, and Mr. Holland were not told that Mr. Eckerman managed a company that failed to repay its investors.[413] If Ms. Salmon, Mr. Bell, and Mr. Holland had been told that Mr. Eckerman's previous companies had failed to repay investors, this information would have been significant to their decisions to invest in Luxury.[414]

14. On December 12, 2016, the Commission issued a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("First Temporary Order") alleging that Mr. Eckerman and PAMG were selling securities in violation of the Act.[415] The First Temporary Order ordered that Mr. Eckerman and PAMG cease and desist from any violations of the Act.[416] The First Temporary Order remains in effect.[417]

15. On December 29, 2017, the Commission issued a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("Second Temporary Order") alleging that Mr. Eckerman and Pacific were selling securities in violation of the antifraud provisions of the Act.[418] Mr. Eckerman managed and controlled Pacific, a real estate company.[419] The Second Temporary Order ordered that Mr. Eckerman and Pacific cease and desist from any violations of the Act.[420] The Second Temporary

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[409] Tr. at 33, 42-43, 45.
[410] Tr. at 154, 163; Exhs. S-24, S-100.
[411] Tr. at 157, 164.
[412] Tr. at 135-136, 160-164; Exh. S-31 at 372-385, 389-392, 396.
[413] Tr. at 46, 78, 105.
[414] Tr. at 46, 78-79, 105.
[415] First Temporary Order.
[416] First Temporary Order at 5.
[417] The Commission has taken administrative notice that no final order has been issued in *Premier Asset Management Group*, A.C.C. Docket No. S-20996A-16-0467.
[418] Second Temporary Order.
[419] Decision No. 77117 at 2,4.
[420] Second Temporary Order at 6.

Order was in effect against Mr. Eckerman and Pacific until March 13, 2019, when the Commission permanently ordered that they cease and desist from any violations of the Act.[421] Mr. Eckerman has admitted committing securities fraud in connection with Pacific.[422]

16. Prior to investing in Luxury, Ms. Salmon, Mr. Bell, and Mr. Holland were not told about the First Temporary Order and the Second Temporary Order.[423] If Ms. Salmon, Mr. Bell, and Mr. Holland had been told about the cease and desist orders, this information would have been significant to their decisions to invest in Luxury.[424]

17. Luxury managed two rental properties, 8812 North 65th Street and 8624 North 64th Place, located in Paradise Valley, Arizona, ("Luxury Rental Properties") that it rented short-term through online rental services AirBnB and Vrbo.[425] On July 19, 2018, the homeowners' association for the Luxury Rental Properties filed a complaint in Maricopa County Superior Court which alleged that the short-term rental of the Luxury Rental Properties violated use restrictions and sought a permanent injunction barring their use for short-term rentals ("Injunction Litigation").[426] On March 6, 2019, the Maricopa County Superior Court filed a stipulated judgment permanently enjoining short-term rentals of the Luxury Rental Properties.[427]

18. Prior to investing in Luxury, Ms. Salmon, Mr. Bell, and Mr. Holland were not told about the Injunction Litigation.[428] If Ms. Salmon, Mr. Bell, and Mr. Holland had been told about the Injunction Litigation, this information would have been significant to their decisions to invest in Luxury.[429]

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, *et. seq.*

2. The findings contained in the Discussion above are incorporated herein.

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[421] Decision No. 77117 at 4.
[422] Decision No. 77117 at 3.
[423] Tr. at 45, 78, 105.
[424] Tr. at 45-46, 78, 105.
[425] Notice at ¶ 23; Luxury Answer at ¶ 23; Eckerman Answer at ¶ 23; MTE Answer at ¶ 23.
[426] Notice at ¶ 24; Luxury Answer at ¶ 24; Eckerman Answer at ¶ 24; MTE Answer at ¶ 24.
[427] Notice at ¶ 25; Luxury Answer at ¶ 25; Eckerman Answer at ¶ 25; MTE Answer at ¶ 25.
[428] Tr. at 46, 79, 106.
[429] Tr. at 47, 79, 106.

3. Within or from Arizona, Respondents Luxury Management Group, LLC, and Michael Barry Eckerman offered and sold securities, within the meaning of A.R.S. § 44-1801.

4. The Respondents failed to meet their burden of proof pursuant to A.R.S. § 44-2033 to establish that the securities offered and sold herein were exempt from regulation under the Act.

5. Respondents Luxury Management Group, LLC, and Michael Barry Eckerman violated A.R.S. § 44-1841 by offering and selling securities that were neither registered nor exempt from registration.

6. Respondents Luxury Management Group, LLC, and Michael Barry Eckerman violated A.R.S. § 44-1842 by offering and selling securities while not being registered as dealers or salesmen.

7. Respondents Luxury Management Group, LLC, and Michael Barry Eckerman committed fraud in the offer and sale of securities, in violation of A.R.S. § 44-1991, in the manner set forth hereinabove.

8. Respondents MTE 2013 Trust and Michael Barry Eckerman directly or indirectly controlled Luxury Management Group, LLC, within the meaning of A.R.S. § 44-1999, and they are jointly and severally liable with Luxury Management Group, LLC, for violations of A.R.S. § 44-1991.

9. Respondents Luxury Management Group, LLC's, MTE 2013 Trust's, and Michael Barry Eckerman's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

10. Respondents Luxury Management Group, LLC's, MTE 2013 Trust's, and Michael Barry Eckerman's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-308, which shall be a community obligation for the marital community of Michael Barry Eckerman and Tonya Eckerman.

11. Respondents Luxury Management Group, LLC's, MTE 2013 Trust's, and Michael Barry Eckerman's conduct is grounds to order administrative penalties pursuant to A.R.S. § 44-2036, which shall be a community obligation for the marital community of Michael Barry Eckerman and Tonya Eckerman.

ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Luxury Management Group, LLC, MTE 2013 Trust, and Michael Barry Eckerman

shall cease and desist from their actions, as described above, in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. §§ 44-2032 and 44-2003(A), Respondents Luxury Management Group, LLC, and MTE 2013 Trust, jointly and severally, as their sole and separate obligations, and Michael Barry Eckerman and Tonya Eckerman, as a community obligation, shall make restitution to the Commission in the principal amount of $733,606.53. Restitution shall be payable to the Arizona Corporation Commission within 90 days of the effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308 subject to legal setoffs by the Respondents and confirmed by the Director of Securities.

IT IS FURTHER ORDERED that all ordered restitution payments shall be deposited into an interest-bearing account(s), if appropriate, until distributions are made.

IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or any publication that may supersede it on the date that the judgment is entered.

IT IS FURTHER ORDERED that the Commission shall disburse the restitution funds on a *pro rata* basis to the investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse to an investor because the investor is deceased or an entity which invested is dissolved, shall be disbursed on a *pro rata* basis to the remaining investors shown on the records of the Commission. Any remaining funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the State of Arizona.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, Respondent Luxury Management Group, LLC, shall pay to the State of Arizona administrative penalties in the amount of $70,000, of which $35,000 is for violations of A.R.S. § 44-1991, as a result of the conduct set forth in the Findings of Fact and Conclusions of Law.

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, Respondent Michael Barry Eckerman, as his sole and separate obligation, and Respondents Michael Barry Eckerman and Tonya Eckerman, as a community obligation, shall pay to

the State of Arizona administrative penalties in the amount of $100,000 as a result of the conduct set forth in the Findings of Fact and Conclusions of Law. Respondent Michael Barry Eckerman, as his sole and separate obligation, and Respondents Michael Barry Eckerman and Tonya Eckerman, as a community obligation, shall also pay jointly and severally with Luxury Management Group, LLC, its administrative penalty of $35,000 for violations of A.R.S. § 44-1991, pursuant to A.R.S. § 44-1999(B).

IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, Respondent MTE 2013 Trust shall pay jointly and severally with Luxury Management Group, LLC, Michael Barry Eckerman, and Tonya Eckerman the administrative penalty of Luxury Management Group, LLC, of $35,000 for violations of A.R.S. § 44-1991, pursuant to A.R.S. § 44-1999(B).

IT IS FURTHER ORDERED that all administrative penalties shall be payable by either cashier's check or money order payable to "the State of Arizona" and presented to the Arizona Corporation Commission for deposit in the general fund for the State of Arizona.

IT IS FURTHER ORDERED that the payment obligations for these administrative penalties shall be subordinate to the restitution obligations ordered herein and shall become immediately due and payable only after restitution payments have been paid in full or upon Respondents' default with respect to Respondents' restitution obligations.

IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent *per annum* or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System in Statistical Release H.15 or any publication that may supersede it on the date that the judgment is entered, may be deemed in default and shall be immediately due and payable, without further notice.

IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. The acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission

for its cost of collection and interest at the maximum legal rate.

IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, the Commission may bring further legal proceedings against the Respondent(s) including application to the Superior Court for an order of contempt.

IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the Commission may grant a rehearing of this Order. The application must be received by the Commission at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant a rehearing within twenty (20) calendar days after filing the application, the application is considered to be denied. No additional notice will be given of such denial.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRWOMAN MARQUEZ PETERSON | COMMISSIONER KENNEDY

COMMISSIONER OLSON | COMMISSIONER TOVAR | COMMISSIONER O'CONNOR

IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 31 day of January 2022.

MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
MP/(gb)ec

SERVICE LIST FOR: LUXURY MANAGEMENT GROUP, LLC, MTE 2013 TRUST, MICHAEL BARRY ECKERMAN, AND TONYA ECKERMAN, TRUSTEES, MICHAEL BARRY ECKERMAN, AND TONYA ECKERMAN

DOCKET NO.: S-21099A-20-0057

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